

## 1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JANUARY 4, 2007

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday,  
5 January 4, 2007, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: C.A. Pantle, Chairman  
9 Gary Noffsinger  
10 Ward Pedley  
11 Marty Warren  
12 Sean Dysinger  
13 Ruth Ann Mason  
14 Judy Dixon  
15 Clay Taylor  
16 Stewart Elliott, Attorney  
17 Madison Silvert, Attorney

18 CHAIRMAN: Let's call the meeting to order.  
19 We're going to start a couple of minutes early.

20 First thing I want to welcome each one of you  
21 here. Tell you we start our meetings with a prayer  
22 and the pledge to allegiance. We'll invite you to  
23 join with us if you so desire. Madison will have our  
24 prayer this evening.

25 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome each one of you  
to the Owensboro Metropolitan Board of Adjustment  
this evening.

If you have anything you want to add to any

1 item or talk on it, please come to one of the podiums,  
2 state your name, be sworn in so we can have everything  
3 recorded here, please.

4 With that the first item we'll need to bring  
5 up is the minutes of the last meeting on December 7th.  
6 They're in the office. There's no problems or  
7 questions at this time. Anybody have anything they  
8 want to add?

9 (NO RESPONSE)

10 CHAIRMAN: If not entertain a motion to  
11 dispose of the item.

12 MS. DIXON: Move to approve.

13 MR. PEDLEY: Second.

14 CHAIRMAN: A Motion has been made and a  
15 second. All in favor raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 The next item being this is the first of the  
19 year, the first thing we need to do is election at  
20 this time. I'll turn it over to our attorney to hold  
21 the elections.

22 MR. ELLIOTT: In accordance with our bylaws,  
23 we have an election of officers the first meeting in  
24 January for the year 2007. So at this time I'll open  
25 nominations for the office of chairman.

1           MS. MASON: I'll nominate Audie Pantle for  
2 chairman.

3           MR. DYSINGER: I second the nomination.

4           MR. ELLIOTT: Are there any other nominations?

5           MR. PEDLEY: I make a motion nomination cease.

6           MR. ELLIOTT: A motion that nomination cease.

7 All in favor.

8           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9           MR. ELLIOTT: Mr. Pantle, you're now chairman.

10           Now we have office of vice chairman. Do we  
11 have a nomination for vice chairman.

12           MR. PANTLE: I nominate Ward Pedley.

13           MR. DYSINGER: Second.

14           MR. PANTLE: Move he be elected by  
15 acclamation.

16           MR. ELLIOTT: All in favor.

17           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18           MR. ELLIOTT: Now we have a vice chairman.

19           Now we have the office of secretary.

20           MS. DIXON: I nominate Ruth Ann Mason.

21           MR. ELLIOTT: Do we have a second?

22           MR. DYSINGER: Second.

23           MR. PANTLE: Move nomination cease she be  
24 elected by acclamation.

25           MR. ELLIOTT: We have a motion that nomination

1       cease. All in favor.

2                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3       MR. ELLIOTT: We now have secretary.

4                   That concludes the elections, Mr. Chairman.

5       CHAIRMAN: Next item.

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7                   -----  
                  CONDITIONAL USE PERMIT

8       ITEM 2

9       811 East Parrish Avenue  
10       1000, 1020 Breckenridge Street  
11       915, 1325 Triplett Street  
12       1215, 1219, 1309 Pearl Street, zoned B-4, P-1  
13       Consider request for a Conditional Use Permit in order  
14       to amend an existing conditional use permit for the  
15       operation of a general hospital and related health  
16       care facilities to construct an addition of 2,140  
17       square feet on the second floor of the existing  
18       hospital building for surgery suites.  
19       Reference: Zoning Ordinance, Article 8, Section 8.2C1  
20       Applicant: Owensboro Medical Health System, Inc.

21                   MR. NOFFSINGER: Mr. Chairman, this  
22       application has been advertised for public hearing at  
23       this time. All adjoining property owners have been  
24       notified. Becky Stone is here to read a brief Staff  
25       Report into the record.

26                   MR. ELLIOTT: State your name, please.

27                   MS. STONE: Becky Stone.

28                   (MS. BECKY STONE SWORN BY ATTORNEY.)

29                   MS. STONE: The properties identified on the  
30       application comprise the Owensboro Medical Health

1 System Campus and are approved under a final  
2 development plan which includes the hospital, parking  
3 facilities, and health care facilities including  
4 offices for health care professionals. The previous  
5 conditional use permits and final development plans  
6 have been approved for the properties.

7 The hospital use is conditionally permitted in  
8 the P-1 and B-4 zones. The applicant is requesting to  
9 amend the conditional use permit under which they are  
10 operating to include a surgical suite on the second  
11 floor of the existing hospital building. No other  
12 alterations on the site are proposed. An amendment to  
13 the previously approved final development plan has  
14 also been submitted. The foot print of the hospital  
15 building will not change. The first floor has been  
16 previously been designed to accommodate this second  
17 floor addition.

18 If approved special conditions should include  
19 approval of the revised final development plan.

20 CHAIRMAN: Any other comments from the Staff?

21 MR. NOFFSINGER: No, sir.

22 MR. WARREN: Mr. Chairman, I need to remove  
23 myself from this item, please, since it's my place of  
24 employment.

25 CHAIRMAN: So noted.

1 Any opposition filed in the office?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Does the applicant have anything  
4 you would like to add at this time?

5 MR. ELLIOTT: State your name, please.

6 MR. ELLIOTT: Mike Sullivan.

7 (MR. MIKE SULLIVAN SWORN BY ATTORNEY.)

8 MR. SULLIVAN: Good evening. Mike Sullivan,  
9 attorney for the applicant.

10 I simply wanted to tell you all that the  
11 hospital is here represented by Bill Alton,  
12 administrative director of facilities to my right, and  
13 Jim Morris, construction manager right next to Bill.  
14 We are here to answer any questions you may have.

15 This is over what I call the old emergency  
16 room. It was on the west side of the hospital.

17 CHAIRMAN: Any members of the board have any  
18 questions of the applicant at this time?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have any additional comment?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Hearing none entertain a motion to  
23 dispose of the item.

24 MS. MASON: Mr. Chairman, I move for approval  
25 with the conditions of the approval of the revised

1 development plan. My findings are that the footprint  
2 of the hospital building won't change. The first  
3 floor was designed to accommodate this addition. It's  
4 a similar use that it originally was the conditional  
5 use permit was for.

6 CHAIRMAN: Is there a second to the motion?

7 MR. DYSINGER: Second.

8 CHAIRMAN: A motion has been made and a  
9 second. Any other questions or comments from the  
10 board?

11 (NO RESPONSE)

12 CHAIRMAN: Any other comments from the Staff?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Hearing none all in favor raise  
15 your right hand.

16 (ALL BOARD MEMBERS PRESENT - WITH THE  
17 DISQUALIFICATION OF MR. WARREN - RESPONDED AYE.)

18 CHAIRMAN: Motion carries.

19 Next item, please.

20 ITEM 3

21 5 Plum Street, zoned R-4DT  
22 Consider request for a Conditional Use Permit in order  
23 to construct a private boat dock in a floodway.  
24 Reference: Zoning Ordinance, Article 18,  
25 Section 18-6(b)(2)(f)  
Applicant: Brenda McAlister

MR. NOFFSINGER: Mr. Chairman, this

1 application has been reviewed by the Planning Staff.  
2 It's found to be in order. It has been advertised for  
3 public hearing at this time and all the adjoining  
4 property owners have been notified.

5 Becky Stone has a Staff Report that she would  
6 like to read and enter into the record.

7 MS. STONE: The property is located on the  
8 river front and the applicant proposes to construct a  
9 private boat dock.

10 The Zoning Ordinance requires a conditional  
11 use permit for the construction of a boat dock in a  
12 floodway. It also requires approval from the Army  
13 Corp of Engineers, the Kentucky Division of Water, and  
14 a statement from a licensed engineer that there will  
15 be no impact on the floodway by the proposed project.  
16 The applicant has submitted both approvals and an  
17 engineer's letter with her application and meets the  
18 requirements of the zoning ordinance to apply for a  
19 conditional use permit for a private boat ramp.

20 Any special conditions would be subject to any  
21 additional requirements of the Army Corp of Engineers  
22 and the Kentucky Division of Water.

23 We would enter the Conditional Use Permit  
24 Staff Report into the record as Exhibit B.

25 CHAIRMAN: Any other comments from the Staff?



1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Is there any opposition filed in  
3 the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Is the applicant here wishing to  
6 add anything at this time?

7 APPLICANT REP: No.

8 CHAIRMAN: Any board members have any  
9 questions of the applicant?

10 MR. DYSINGER: Becky, just for the record.  
11 The letter from the engineer, does it indicate that  
12 there will not be a negative impact on the floodway?

13 MS. STONE: That's correct.

14 CHAIRMAN: Staff have any other comments at  
15 this time?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Entertain a motion to dispose of  
18 the item.

19 MR. DYSINGER: Mr. Chairman, move to approve  
20 given the findings that the applicant has the approval  
21 of the Corp of Engineers, Kentucky Division of Water,  
22 as well as a letter from a licensed engineer stating  
23 that there will be no impact on the floodway, and as  
24 there appears to be no opposition.

25 CHAIRMAN: Is there a second to the motion?

1 MS. DIXON: Second.

2 CHAIRMAN: Any other comments from the board?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Hearing none all in favor raise  
7 your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Next item, please.

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12

#### VARIANCES

13

#### ITEM 4

14

4419 Wexford Crsg, zoned R-1C

15

Consider request for a Variance to reduce the front  
building setback from 25 feet to 24.18 feet in order  
to bring an existing residence into compliance.

16

Reference: Zoning Ordinance, Article 8,  
Section 8.57(c)

17

Applicant: Bill Jones Master Builder, Homes by Benny  
Clark

18

19

MR. NOFFSINGER: Mr. Chairman, this

20

application has been reviewed by the Planning Staff.

21

It's found to be in order. The application has been

22

advertised for public hearing at this time and all

23

adjoining property owners have been notified.

24

The Staff has provided each board member with

25

a Variance Staff Review which you have had time to

1 read.

2 Give you a little history on this property.  
3 The residence was constructed in 1997. That was prior  
4 to the OMPC issuing building permits in this  
5 development. This building permit was issued by the  
6 Daviess County Building Inspector at that time.  
7 However, apparently an error was made in locating the  
8 home on the lot. The home does encroach into the 25  
9 foot setback.

10 The Staff has found that the encroachment  
11 would not adversely affect the public health, safety  
12 or welfare; will not alter the essential character of  
13 the general vicinity; will not cause a hazard or a  
14 nuisance to the public; and will not allow an  
15 unreasonable circumvention of the zoning ordinance and  
16 regulations. We say that because the permit was  
17 issued for the construction of this building and the  
18 proper inspections were made at the facility.  
19 However, during that inspection process, the error was  
20 not caught. Such a small discrepancy that the way the  
21 street curves in that area it's certainly  
22 understandable how an error could be made.

23 It is also, if you drive along this street,  
24 the error is not noticeable. You would not, an  
25 inspector would not notice this encroachment unless

1 you actually did a survey to determine the proximity.

2 With the errors that have been made, I think  
3 there was no willful violation here. I think it was  
4 just an honest mistake. In fact, that home has been  
5 there since 1997. We would recommend that you  
6 consider this variance favorably.

7 We do have one condition. That is if you  
8 approve this variance, grant it specific to the  
9 existing encroachment and does not extend to future  
10 building additions that may occur on the site.

11 MR. PEDLEY: Mr. Chairman, I disqualify myself  
12 on this item.

13 CHAIRMAN: So noted.

14 Is there any opposition in the office?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Is the applicant here that has any  
17 statements?

18 (NO RESPONSE)

19 CHAIRMAN: Any board members have any comments  
20 at this time or any motion?

21 (NO RESPONSE)

22 CHAIRMAN: Entertain a motion to dispose of  
23 the item.

24 MR. WARREN: I make a motion that we grant  
25 this variance due to the findings that it will not

1 adversely affect the public health, safety or welfare;  
2 it will not alter the essential character of the  
3 general vicinity; it will not cause a hazard or a  
4 nuisance to the public; and it will not allow an  
5 unreasonable circumvention of the requirements of the  
6 zoning regulations. I'd also like to add that the  
7 condition being that this variance were granted to  
8 this specific incident only and would not apply to  
9 future building additions.

10 CHAIRMAN: Is there a second to the motion?

11 MR. DYSINGER: Second.

12 CHAIRMAN: A motion has been made and a  
13 second. Any other comments or questions from the  
14 board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any other comments?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Hearing none all in favor raise  
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT - WITH THE  
21 DISQUALIFICATION OF MR. PEDLEY - RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 ITEM 5

25 501, 601 Commerce Drive, zoned B-1

1 Consider a request for a Variance to waive the  
2 vehicular use area landscaping perimeter requirement  
3 and a Variance to waive the vehicular use area  
4 landscaping interior requirement.  
5 Reference: Zoning Ordinance, Article 17, Sections  
6 17.312, 17.32  
7 Applicant: Kermit Speer, Bruce Speer, Gary Melvin

8 MR. NOFFSINGER: Mr. Chairman, this  
9 application has been reviewed by the Planning Staff.  
10 The application is found to be in order. It has been  
11 advertised for public hearing at this time and all  
12 adjoining property owners have been notified.

13 Becky Stone is here tonight to read a Variance  
14 Staff Review. Each member has received a copy of and  
15 she'd like to read that into the record.

16 MS. STONE: There are no special circumstances  
17 that do not generally apply to land in the general  
18 vicinity or in the same zone.

19 The subject property is located in a B-1  
20 Neighborhood Business Center Zone. This zone was  
21 established to promote sound, consolidated  
22 neighborhood-oriented shopping facilities in newly  
23 developing urban areas. The subject property is  
24 subject to a development plan that was approved by the  
25 OMPC in October of 1992. At that time 252 parking  
spaces were shown on the development plan. The  
ordinance in effect at that time would have required  
224 parking spaces. The pavement coverage indicated

1 100,000 square feet of vehicular use area. Five  
2 thousand square feet of interior landscaping (5% of  
3 the VUA area) was shown and approved on the final  
4 development plan. At the time of the development plan  
5 approval the 0.5 acre tract (501 Commerce Drive)  
6 adjacent to the street was not included and the plan  
7 indicated that this tract would be subject to  
8 development plan approval prior to development.

9 I would like to enter the Development Plan  
10 into the record. I think you all have a copy of that.

11 In August of 2006, Jim Mischel, the Zoning  
12 Administrator, sent a violation to 601 Commerce Drive  
13 in response to a complaint that he received regarding  
14 the display area and outdoor storage in the parking  
15 lot and street right-of-way. The violation stated  
16 that the site was in violation of the Development Plan  
17 approved October 29, 1992. It also stated that the  
18 OMPC requires that the minimum amount of parking  
19 spaces be available for customers at all times and  
20 outdoor storage in the right-of-way is not permitted.  
21 The Notice of Violation also states that the property  
22 does not meet the requirements of the Owensboro  
23 Metropolitan Landscape Regulations, Article 17,  
24 Section 17,311, 17.312 and 17.32.

25 Since the violation was issued, the city and

1 county have amended the Zoning Ordinance to reduce the  
2 number of parking spaces required for retail sales  
3 establishments. This change reduced the amount of  
4 parking required for this building from 224 to 166  
5 spaces and gave the applicant the ability to revise  
6 the development plan to show the new parking required  
7 to identify the outdoor display area, to show that  
8 outdoor display and storage will be located off of the  
9 public right-of-way, to show the required landscaping,  
10 and to show any outdoor storage to be screened. The  
11 revised development plan also gives the applicant the  
12 opportunity to include the 0.5 acre tract at 501  
13 Commerce Drive in the final development plan for  
14 approval.

15 The revised final development plan was  
16 submitted without the required perimeter or interior  
17 landscaping as required by Article 17 of the Zoning  
18 Ordinance. Additionally, the Zoning Administrator  
19 conveyed to the applicant's engineer that several  
20 items that are placed on the site do not qualify as  
21 outdoor display, but are in fact outdoor storage and  
22 should be screened. That is the subject of the next  
23 item on the agenda under Administrative Appeals.  
24 There is no difference in this retail establishment  
25 from other retail uses that are required to install



1 interior landscaping and perimeter vehicular use area  
2 landscaping along street rights-of-way within the  
3 urban service area. It is a requirement of the  
4 ordinance and would visually benefit the site as it  
5 does other similar types of sites within the urban  
6 service area. There is no special circumstance that  
7 demonstrates that this site should be exempt from  
8 landscaping requirements that are applied consistently  
9 to these types of developments. There is no reason to  
10 allow the interior or perimeter vehicular use area  
11 landscaping to be waived.

12 The strict application of the regulation does  
13 not deprive the applicant of reasonable use of the  
14 land or create an unnecessary hardship on the  
15 applicant.

16 The installation of the required landscaping  
17 is not an undue hardship on the applicant. All like  
18 sites in Owensboro, Whitesville and the urban service  
19 area have the same requirements. With the reduction  
20 of the amount of parking required at this site and the  
21 inclusion of the 501 Commerce Drive into the  
22 development plan, the applicant has more flexibility  
23 to determine the areas of outdoor display and to  
24 provide the appropriate amount of parking required at  
25 this site and the inclusion of the 501 Commerce Drive

1 into the development plan, and to provide the  
2 appropriate landscaping requirements. The applicants'  
3 argument that Commerce Drive serves only two  
4 businesses does not eliminate the need for  
5 landscaping. The public travels on the street to  
6 access the business located there, whether there are  
7 two businesses or fifty businesses. Commerce Drive is  
8 a public street and as such, the site should be  
9 landscaped along the public right-of-way boundary.  
10 The applicants' arguments that they should not be  
11 required to landscape because a large portion of their  
12 business is based on outdoor display also falls short.  
13 The parking space requirements have been reduced  
14 recently giving Rural King more area to devote to  
15 outdoor display without encroaching into required  
16 parking, so it should be easier to provide the  
17 landscaping under a revised development plan that has  
18 a lesser parking requirement. The applicants'  
19 argument that the outdoor display areas services as a  
20 screen is not valid. Green type screening in the form  
21 of a three foot high continuous element and a tree  
22 every 40 linear feet would serve as a screen to the  
23 outdoor display areas located on the site and benefit  
24 the site aesthetically. The original complaint was  
25 based on the amount of outdoor display located on the

1 lot and while the site is allowed to have designated  
2 outdoor display areas, the landscaping would serve to  
3 make the site more visually pleasing. The applicants  
4 state that the variance will preserve the public  
5 safety and welfare and will not alter the essential  
6 character of the neighborhood because there have not  
7 been complaints concerning the existing landscaping.  
8 The absence of a complaint is not sufficient or  
9 competent evidence to argue that this site is in any  
10 way different from other similar sites conducting  
11 retail businesses with outdoor display and does not  
12 provide factual evidence that the board can use to  
13 make a finding that the public safety and welfare are  
14 being preserved by the lack of landscaping.  
15 Additionally, the installation of the perimeter  
16 landscaping adjacent to the public right-of-way will  
17 help ensure that the outdoor display area stays within  
18 the site and does not spread to the right-of-way which  
19 was the case at the time of the notice of violation,  
20 protecting the public safety by keeping products off  
21 of the public right-of-way. We also disagree with the  
22 applicants' statement that the store functions as a  
23 home improvement center and would be like an  
24 industrial business which does not require interior  
25 landscaping. The Staff's opinion is that this is no a

1 retail store selling a wide variety of merchandise to  
2 the general public and farming community and is not a  
3 home improvement center.

4 Looking on their web site today the  
5 departments that they list that they have products in  
6 are automotive, clothing, collectables, domestics,  
7 farm, hardware, home products, lawn and garden,  
8 outdoor living, pet supplies, sporting goods, tools,  
9 toys and gift certificates.

10 We also have a weekly on-line sales flyer that  
11 we'll enter into the record that shows the variety of  
12 products that are sold at the site.

13 The strict application will not cause undue  
14 hardship on the applicant. The installation of  
15 landscaping in a retail center is a required and  
16 expected cost of conducting business on the site and  
17 an exception for any retail establishment should not  
18 be made unless there is some type of compelling  
19 physical or topographical condition on the site that  
20 prevents the installation of that requirement.  
21 Otherwise, the Board will set a precedent to eliminate  
22 landscaping because a business owner decides that they  
23 do not want it. The elimination of landscaping  
24 requirements on this site is an unreasonable  
25 circumvention of the zoning ordinance and should not

1 be allowed.

2 We do not know if the circumstances from which  
3 relief is sought is a result of willful actions taken  
4 by the applicant. The previously approved development  
5 plan showed landscaping existing on this site. We do  
6 not know when the landscaping was removed or by whom.  
7 If it was removed by this applicant, it was done so in  
8 violation of the development plan and the Zoning  
9 Ordinance.

10 Granting this Variance may adversely affect  
11 the public health, safety or welfare, because it could  
12 allow display area to encroach on the public  
13 right-of-way, as was the case when the violation was  
14 sent out.

15 It may not alter the essential character of  
16 the general vicinity; it may not cause a hazard or a  
17 nuisance to the public, but it will allow an  
18 unreasonable circumvention of the requirements of the  
19 zoning regulations.

20 The Staff recommends denial. Regardless of  
21 the outcome of the appeal, a final development plan is  
22 still being approved by the OMPC. The plan must  
23 identify the fixed outdoor display area that cannot  
24 encroach into the required parking or landscaping.

25 We did have a call from a person who

1 identified themselves as an adjoining business owner  
2 who indicated that they thought the requirements of  
3 the Zoning Ordinance should be met. I think that Jim  
4 had a call also. I'll let him speak to that.

5 MR. ELLIOTT: State your name, please.

6 MR. MISCHEL: Jim Mischel.

7 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

8 MR. MISCHEL: Let me give you a little history  
9 on this while we're here.

10 Becky has stated that we sent a letter out  
11 August 24th. Actually this case started back April  
12 11th. I got a call in office. Kind of what started  
13 this whole thing was there was a lady that had an  
14 accident out in the parking lot, a wreck. Her husband  
15 called and stated that the cause of the accident was  
16 because of all this material sitting out there. It  
17 was just everywhere. She had a wreck where she didn't  
18 see someone come around.

19 April 11th I sent a letter to the owners kind  
20 of stating what the problem was and we needed to get  
21 together and kind of seek a solution on this.

22 So from April to August we were in dialog.  
23 Evidently in August I felt like it wasn't going  
24 anywhere. That's when I sent the official letter of  
25 violation out.

1           From August to this point we've had more  
2           discussions and finally they appealed this to the  
3           board.

4           Got a couple of hand-outs. I've got a copy of  
5           this development plan. I thought it would be good if  
6           everybody could take a look at it.

7           . We highlighted the green. This was the  
8           development plan that was approved in 1992. This  
9           would show you what was approved in '92, as far as the  
10          landscaping, the required landscaping, to give you an  
11          idea of what we're talking about. Those are the items  
12          they wish to get a variance from.

13          Historically, as far as zoning enforcement, I  
14          see a problem with this variance. We still get calls  
15          from people back I'd say 20, 25 years ago there used  
16          to be a few variances given on landscaping. I still  
17          hear about those. People say, how come that place  
18          wasn't landscaped? They've got a variance. Most  
19          people say, that's not right. Everybody ought to have  
20          to do the same thing. We still hear about that.

21          I feel like if this is granted you're going to  
22          see more of these variances down before.

23          I don't know if you have any questions on that  
24          landscaping. I do believe if this material had been  
25          off the right of way -- I don't know. I wasn't there

1 the day the accident happened. I can't tell you what  
2 caused it or anything. The times I've been out there,  
3 there's material at different locations. So I don't  
4 know if that caused it or not.

5 It seems like the landscaping, if it was put  
6 in, it would, kind of more define the area of traffic  
7 flow.

8 I don't know if you have any questions at this  
9 time.

10 MR. PEDLEY: Yes, I have a couple of  
11 questions, Jim.

12 On existing landscaping, you're showing here,  
13 this development plan was 1992. Was that landscaping  
14 ever installed or do you know if it was or not?

15 MR. MISCHEL: I don't have any idea.

16 MR. PEDLEY: You don't know if it was  
17 installed and removed.

18 MR. MISCHEL: No, sir, I don't.

19 MR. PEDLEY: But this plat was in 1992; is  
20 that correct?

21 MR. MISCHEL: Yes.

22 MR. DYSINGER: But the landscaping is not  
23 there now, the highlighted area?

24 MR. MISCHEL: That's right. There could be  
25 one, but for all purposes it's not.



1           CHAIRMAN: Board members have any other  
2 questions of the Staff at this time?

3           MR. PEDLEY: I have one other question.

4           Back when the Zoning Ordinance was updated, we  
5 went from parking lots with 30,000 square feet or more  
6 that required interior landscaping, that was raised to  
7 50,000 square feet. Has that been taken into  
8 consideration on this?

9           MS. STONE: This parking area shows 100,000  
10 square feet of vehicular use area. So it would hit  
11 that 50,000. It's five percent over 50,000 and three  
12 percent over 30,000 now. So it would require the five  
13 5 percent of landscaping at this time.

14          MR. PEDLEY: Even after the parking reduction  
15 still would?

16          MS. STONE: Yes. Their vehicular use area  
17 would still be over 50,000 square feet.

18          CHAIRMAN: Board have any other questions?

19          (NO RESPONSE)

20          CHAIRMAN: The applicant ready? Come forward.

21          MR. ELLIOTT: State your name, please.

22          MR. KAMUF: Charles Kamuf.

23          (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

24          MR. KAMUF: I represent Rural King. We have a  
25 regional president here with us tonight, Don Davis.

1 We also have the manager of the Rural King, Mr. Greg  
2 Hart. He is here to testify.

3 Now, as far as parking, that's over. That's  
4 not an issue, is it? We've got 150. The ordinance  
5 requires 150 parking places. We've got 199. You  
6 didn't bring up something that's not on the agenda,  
7 did you? We meet all the requirements for the  
8 parking.

9 MR. MISCHEL: I think she had stated that we  
10 have changed the parking ratio, but we haven't seen  
11 your final plan either. Until that's filed, I can't  
12 really tell you if it meets it or not.

13 MR. KAMUF: According to the application that  
14 we have, that's not an issue here. In other words --

15 MS. STONE: Our only issue with the parking  
16 would be that the outdoor display area on your  
17 development plan would need to be identified and set  
18 so that it shows that required parking as available at  
19 all times.

20 MR. KAMUF: I understand. I misunderstood  
21 you.

22 I think most of you are familiar with Rural  
23 King. It's up on Highway 60. The area that you see,  
24 here's McDonald's. This area is Commerce Drive.  
25 Commerce Drive starts at McDonald's and comes all the

1 way back to the back and it ends in a big field in the  
2 back behind Rural King.

3 We've owned that property since 1996. Mr.  
4 Davis is here to tell you that he's been the CEO of  
5 that organization for 11, 12, 13 years, and that he  
6 had no knowledge whatsoever of any violation that was  
7 occurred up there.

8 As you know, Stewart, in running a title  
9 opinion, these development plans are not recorded in  
10 the courthouse. If I run the title, I don't run into  
11 that development plan.

12 It will be his testimony that they've been up  
13 there since 1996 and that there has never ever been a  
14 complaint of any of it. To the best of his knowledge  
15 there has not been any violation or complaint made to  
16 him. Certainly it's his opinion that there has not  
17 been anything removed.

18 Prior to that I think there was a furniture  
19 store up there prior to 1996.

20 In this particular area along the front, the  
21 only violation that we have along the front is the  
22 shrubs. We have the trees. The trees have been there  
23 for years. So that's the plan that we see there.

24 We are using the interior of the parking lot,  
25 some of these areas that you see, for display items at

1 the present time. As far as my knowledge, in other  
2 words, we've notified all six property owners adjacent  
3 to it and we've never had any problem with McDonald's  
4 or any of the neighbors to the best of our knowledge.

5 As a matter of fact, the local manager is here  
6 to confirm that.

7 They get along with their neighbors. He will  
8 tell you that he's always got along with McDonald's.  
9 If anybody was going to complain about this, as far as  
10 the neighbors, it would be McDonald's who has their  
11 restaurant out front.

12 The red that you see there are trees that we  
13 have.

14 There are special conditions that we think  
15 that the Commerce Drive serves only for deliveries of  
16 Rural King. When you come to this particular area and  
17 come around to the end, the only place you come is a  
18 10, 15 acre field back there, maybe a little larger.  
19 It dead ends in that particular point.

20 The remaining land to the rear is not  
21 developed. In the event that there would be a  
22 development where screening would be involved, we  
23 would certainly have no problem of doing that. There  
24 has not been any screening other than what we have at  
25 the present time since we purchased it. We did not

1 have any idea about a development plan that required  
2 anything until we got this notice, whatever date that  
3 Jim says in April, whatever date that they got it.

4 Strict application of this would deprive the  
5 applicant of reasonable use of the land in that, and  
6 this will be an explanation made by Mr. Davis, is that  
7 Rural King is different than most other type of retail  
8 stores in that their number one retail promotion is a  
9 display. They use the display on outside and they  
10 have it in the parking lot, which is allowed under the  
11 Planning & Zoning Ordinance. There's not a question  
12 about display because you can do that.

13 It's our contention that instead of being  
14 where you have some of this outdoor interior  
15 landscaping that you would require in here, we have  
16 display items along there. It would not be necessary  
17 to have the screening in these areas because the only  
18 people that you would screen from would be the people  
19 that use Commerce Drive, and nobody uses Commerce  
20 Drive except the people that would get to the rear of  
21 the building.

22 Now, that's the issue as far as the exterior.

23 Also, the calling confirmation conveyed  
24 reproducing the interior for displays. The condition  
25 is unique and I still think it's argumentative or we

1 can make a good argument about other retail stores  
2 such as Wal-Mart and those areas. They're not  
3 necessarily zoned industrial.

4 If we had this property zoned industrial, we  
5 would not be required to have any type of the interior  
6 or exterior landscaping.

7 The issue that we have at the present time is  
8 one of time. The gentleman that owned Rural King,  
9 there are three of them, as you'll see in your  
10 application. They've made a diligent effort since  
11 August of this year to sell the property. The reason  
12 they're trying to sell the property is that they  
13 intend to build another store here in Owensboro. It  
14 will have 10 to 15 more employees than they have at  
15 the present time.

16 They understand that if they build a new  
17 building they have to qualify under all existing  
18 screening regulations, but they did not know at the  
19 time that they purchased this property that there was  
20 any question about the screening. The screening that  
21 is there now is pretty well what was there when they  
22 purchased the property.

23 The development plan, as I explained to you,  
24 is not a recordable document. Mr. Davis will explain  
25 to you that he had no notice of any type of violation

1       until he got a call from Mr. Mischel.

2               We have the parking lot. We have three or  
3 four issues that the Staff wanted us to address. We  
4 addressed the park. I think we're required to have  
5 150. On the development plan we'll show 199 parking  
6 places.

7               I think basically our argument is that we  
8 shouldn't have to qualify. We didn't in the past.  
9 We've used this area since 1996 in the same manner  
10 that we're using it today.

11              In any event, we're trying to sell the  
12 property. Why would we be required at this time. We  
13 have the property listed. We're trying to sell it.  
14 Whoever buys that property will certainly I don't  
15 think will be using the same area as Rural King. In  
16 the alternative we're asking for some time to finish  
17 the sale of this property.

18              Mr. Davis is here to give you some of his  
19 opinions and we also have the store manager who has  
20 been there, he's been there since the day it opened.  
21 So if you have questions about the screening or  
22 anything, this guy is the guy to ask because he's been  
23 there since the very day.

24              Mr. Davis.

25              MR. ELLIOTT: State your name, please.

1 MR. DAVIS: My name is Don Davis.

2 (MR. DON DAVIS SWORN BY ATTORNEY.)

3 MR. DAVIS: I want to make one correction. My  
4 title is actually CFO, so that it's recorded properly.

5 As Mr. Kamuf stated, I'm also the president of  
6 Rural King Distributing.

7 I do want to confirm what he had said in  
8 regards to we were not aware of the development  
9 agreement until the situation came up in August was  
10 when I first became aware of it.

11 We, again, purchased the property back in 1996  
12 and that was just not a document provided during the  
13 sale of the property.

14 I do want to point out some clarification. I  
15 know it was discussed that we did not qualify as a  
16 home center. The departments have seen that we sell  
17 were brought up as part of that. Actually those  
18 department that was mentioned, over half of those are  
19 the same things that are sold in Home Depot and  
20 Lowe's. So those are categories that we certainly  
21 sell.

22 We are a unique business in regards to we're a  
23 hybrid of different types of retailers in regards to  
24 home center and then farm stores, which I don't  
25 believe you guys have other farm stores of our size or



1 of our nature here in the community.

2 As Mr. Kamuf pointed out, we are trying to  
3 sell the property and we're interested in trying to  
4 find another property here in the area. Owensboro has  
5 been a very good area to us. We like being in  
6 Owensboro and we think we're a good fit for the  
7 community. Because of that we became in a situation  
8 where we need to expand because of not having enough  
9 room inside of our location, let alone with regards to  
10 the outside with our displays.

11 Was also mentioned that the landscaping, that  
12 these requirements would maybe provide us a better  
13 opportunity to display our merchandise. That's  
14 actually incorrect in that fact that we did compromise  
15 and coming into compliance with the parking  
16 regulations. That required us to reduce our display  
17 area, which actually has impacted our sales.

18 Our outside display areas are very important  
19 to our business because of a customer, that be a  
20 farmer, landscaper or home builder comes in and needs  
21 those types of products. They want to be able to see  
22 them and actually feel them to be able to purchase  
23 them. So we've actually reduced our display area  
24 recently through this process in trying to come into  
25 compliance.

1           I also want to confirm that if we are able to  
2           expand and find a facility here, we're having a little  
3           bit of difficult time selling our property. It's over  
4           a million dollar property to be able to sale. But if  
5           we are able to expand, we will bring some additional  
6           jobs to the area also.

7           I believe that's all I can provide  
8           specifically on this issue. Are there any questions  
9           specifically for me you would like to ask?

10           (NO RESPONSE)

11           CHAIRMAN: Thank you.

12           MR. DAVIS: Thank you.

13           MR. ELLIOTT: State your name, please.

14           MR. HOWARD: Greg Howard.

15           (MR. GREG HOWARD SWORN BY ATTORNEY.)

16           MR. HOWARD: I've been employed at Rural King  
17           since 1996. I've been there since the first day that  
18           we opened the store.

19           We've always been good neighbors with the  
20           other businesses around us. Always tried to help each  
21           other out. To my knowledge we haven't had any  
22           complaints. Haven't heard of any complaints from  
23           anyone up until now. That's basically all I have to  
24           say. Any questions for me?

25           (NO RESPONSE)

1           MS. STONE: I just have a couple of points  
2 from Mr. Kamuf's testimony that I would like to  
3 clarify.

4           He's correct that development plans are not  
5 recorded as plats in the courthouse; however, there  
6 are land use restrictions recorded at the county court  
7 clerk's office. Land use restriction on a piece of  
8 property would indicate that there is a development  
9 plan on file and that can be found at the office of  
10 the Planning Commission. I believe Kentucky Revised  
11 Statutes made that a requirement in 1988. So that  
12 would have predated the 1992 development plan.

13           Then the other comment that I would make would  
14 be he mentioned that industrially zoned property would  
15 not be required to have interior landscaping. That is  
16 also correct. However, this use would not be a  
17 permitted use in an industrially zoned property.

18           MR. MISCHEL: I just have one comment.

19           I think this would be bad to do for one  
20 reason, the property right now they have for sale.  
21 Once this variance is given, it stays with the  
22 property. They might sell this in two or three  
23 months, but whoever comes in they won't have to  
24 landscape either. If this property is for sale, it  
25 looks like they could landscape and the cost on this

1 property would not be that much. The next tenant that  
2 comes in would be ready to go.

3 The variance does not go with them. If they  
4 leave the site, the variance stays with the site. It  
5 gets in compliance now or it won't be in compliance.

6 CHAIRMAN: Any board members have any comments  
7 at this time or questions?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Kamuf, do you have anything  
10 else you want to add?

11 MR. KAMUF: No, except he's trying to be, Don  
12 is trying to be a good neighbor along with Greg. For  
13 us to put any of this additional landscaping in that  
14 we've never been required to do since 1996 when he  
15 owned it, would be null and void if we ever sold the  
16 property because, in other words, whatever landscaping  
17 that we're going to put in we'll have to put in at the  
18 new property. It will be useless for us to put in there.  
19 If we had some sufficient time to work this out where  
20 we could get the property sold. It's been listed.  
21 It's been listed since the first time that they got in  
22 touch with me. We just think that this is the place  
23 to go where we've been doing something that we had no  
24 knowledge that we were in violation and that we -- it  
25 will not do any good.

1           I don't have any problem about a temporary,  
2           any type of temporary order where it would not run  
3           with the land. We're not necessarily requesting that  
4           it run with the land. In other words, we could have a  
5           condition in there that in the event that we sell the  
6           property, that the condition is null and void. We  
7           don't have any problem. What good would it do us to  
8           do this expensive landscaping and then come in in two  
9           weeks or two months and sell the property. It hasn't  
10          been a problem in the last ten years.

11           MR. MISCHEL: I don't believe we have what you  
12          would call a temporary variance or anything like that.

13           MR. NOFFSINGER: I have a question for Mr.  
14          Mischel.

15           How long have you been dealing with this  
16          issue?

17           MR. MISCHEL: Since last I'd say March, April.  
18          I sent a letter out April. It's been quite awhile.

19           MR. NOFFSINGER: And this is January '07.  
20          Thank you.

21           MS. STONE: I think the definition of the  
22          Kentucky Revised Statute says that a Variance runs  
23          with the property. So I don't know how the board  
24          would be able to, and that's a question for our  
25          attorneys, I guess, make a decision in conflict with

1 the definition in KRS.

2 MR. ELLIOTT: It does run with the property,  
3 yes.

4 MS. MASON: So you're saying that cannot be,  
5 that cannot be a stipulation that we just do it  
6 temporary?

7 MR. ELLIOTT: Right.

8 MS. MASON: I knew you were shaking your head  
9 no earlier, but it wasn't said out loud.

10 MR. KAMUF: I talked to my client. If we  
11 could have a period of a year to sell the property and  
12 to start construction of the new one, in other words,  
13 once we sell this we've got to start construction on a  
14 new one. So if we could have a period of a year to  
15 correct whatever is required.

16 We have spent a great deal of money with the  
17 engineering firm to get most of the issue straightened  
18 out. These are two that we don't have straightened  
19 out yet. In other words, if we could have some  
20 additional time to get it straightened out, I think we  
21 could sell the property. I mean you just don't sell a  
22 piece of property for 1,500,000 or over a million  
23 dollars over a three or four month period.

24 The first thing that we did when they got me  
25 involved is put the property up and list the property

1 for sale.

2 MR. SILVERT: That might be considered in the  
3 appeal. Just throw that out. On the table right now  
4 is the variance.

5 MR. KAMUF: I didn't understand.

6 CHAIRMAN: State that again.

7 MR. SILVERT: I was saying what you proposed  
8 might be something that the board might consider in  
9 the appeal. The variance is what's on the table right  
10 now. Just wanted to straighten that out.

11 MR. NOFFSINGER: Madison, the appeal is on a  
12 different matter. That has to do with the outdoor  
13 storage and a whole other issue. This is about the  
14 landscaping.

15 CHAIRMAN: Board members have any questions or  
16 comments at this time?

17 MR. WARREN: Does this board have the power to  
18 even give them a year?

19 MR. NOFFSINGER: I think that's what the  
20 attorneys are saying. This variance is a variance and  
21 it runs with the land. We have been dealing with this  
22 issue since March. We couldn't get anywhere. We had  
23 to file a formal violation, I believe, in August of  
24 2006.

25 I don't know what engineering has been going

1 on. I do know we have a lot of material stored all  
2 over that parking lot. If there's been any movement,  
3 it's been a reduction in those materials because  
4 they've been sold. Now we're moving into spring and  
5 we're going to be looking at a greenhouse. We're  
6 going to be looking at fertilizers. This is an issue  
7 that needs to be addressed. We've been trying to  
8 address it since March. In terms of perimeter  
9 landscaping, the perimeter landscaping, that issue is  
10 not going anywhere whether it's Rural King or a new  
11 owner. Because the perimeter landscaping is a  
12 requirement and it is where it is.

13 Unless this parking lot is defined with  
14 planted areas, you're going to continue to see  
15 materials placed all over. So we've got to outline  
16 where these display areas are. Because when we  
17 started with this, we were looking at an entire  
18 outdoor storage area saying it had to be screened.

19 Well, the applicants argue now that these are  
20 outdoor display areas? So we bought that. We  
21 understand that and saying, you don't have to screen  
22 those, but you still need to meet their interior  
23 perimeter landscaping requirements that all other  
24 corporate citizens in this community are expected to  
25 follow. They're on the approved development plan.



1           I don't know what reasons there are to justify  
2           a variance simply because, hey, we're getting ready to  
3           move. We've got our land up for sale. We're looking  
4           to go someplace else. You're still going to have  
5           parking requirements for a new facility as well as  
6           interior landscaping.

7           MR. DYSINGER: Gary, just so I understand.  
8           The screening is not an issue here. On Commerce, I  
9           guess, would be the big issue.

10          MR. NOFFSINGER: That would be your perimeter  
11          landscaping along Commerce Drive and interior  
12          landscaping. Screening would be an issue that will be  
13          discussed on the next item, the appeal.

14          MR. MISCHEL: I feel like you've got an  
15          approved development plan since 1992. It needs to be  
16          complied with. For them to maybe pass it onto  
17          somebody else, they just need to put it in now. Then  
18          whoever buys this property will be in compliance.  
19          It's got to go in. You might as well do it now as  
20          later and pass it onto somebody else, which we might  
21          be here again.

22          MR. KAMUF: Gary, in answer to your question.  
23          You heard what the gentleman talked about. He talked  
24          about that he had been there since 1996 and he said  
25          there hadn't been any change whatsoever in the

1 property. It's been that way evidently since 1992  
2 whenever the property was originally there. What  
3 problem is it to give a little more reasonable time to  
4 allow him -- he's not trying to circumvent. He didn't  
5 do anything willful. What he has done, he bought a  
6 piece of property. The man has told you he didn't --  
7 evidently the title didn't show that there was a  
8 development plan. Now, there might be. I haven't run  
9 titles in the last several years.

10 What problem is it to give him a reasonable  
11 period of time to get it straightened out or sell the  
12 property?

13 MR. NOFFSINGER: Charlie, I think we've been  
14 reasonable. We have been trying to work this issue  
15 out since March of 2006. Almost one year. Here we  
16 are today. This has been -- we've worked with you for  
17 several months.

18 We have areas where material is being stored  
19 in the right of way. We have areas where materials  
20 are being stored not only in the right of way, but  
21 along interior landscaped areas. We've had one  
22 accident out there that we're responding to, yes, a  
23 complaint. We've got the job to make sure that we  
24 force this, enforce the ordinance in a consistent  
25 manner.

1           In 1992 we have a plan here by Hale, Riney &  
2 Gilmore that says these areas existed. I don't know  
3 what happened to them. Staff is not pointing the  
4 blame. Just like in the Staff Report. We said, we  
5 don't know if willful violation or not. We're not  
6 here to decide that. It's an issue of should the  
7 variance be granted and what's the justification. The  
8 timing of it, you know, how much time do you give?

9           MS. STONE: The board has an application  
10 before it on a variance and they need to act on  
11 approving or denying that application that's before  
12 them tonight.

13          MR. DYSINGER: Mr. Chairman, if I could.

14          Mr. Kamuf, the issue of willfulness. From  
15 1996, if nobody knew what was suppose to be done, I  
16 guess you could make an argument there. However,  
17 Staff makes an excellent point. The issue came up  
18 originally with all the parties that are in this room  
19 in March. I haven't heard a response to that from you  
20 or your client in terms of why has it taken a year to  
21 get to this point to even officially ask for a delay?

22          MR. KAMUF: He can answer that.

23          MR. DYSINGER: That would be great.

24          MR. ELLIOTT: State your name, please.

25          MR. DAVIS: Don Davis.

1           The reason for the time, and this might be a  
2           misunderstanding on my part, but the issue that was  
3           brought to us that seemed to be the significant issue  
4           was the parking. We have made significant progress on  
5           that parking. Again, we've lost sales in order to  
6           keep getting compliance with that issue.

7           I did not realize that the landscaping was an  
8           issue. You say it was on the original document. I'm  
9           sure it was. But I understood, my interpretation was,  
10          the issue was the parking was the issue.

11          I feel like the impression is being given that  
12          there's been no progress made since March. In fact,  
13          in your Staff Report it said there has been progress.  
14          I apologize if there wasn't progress quick enough  
15          again. We like being in this area. We're not trying  
16          to cause a problem.

17          The issue in regards to the -- if I could make  
18          another comment besides addressing your question.

19          MR. DYSINGER: Please.

20          MR. DAVIS: In regards to this being  
21          temporary, we don't know what the use is going to be  
22          down the road. The next people could be in a  
23          situation where they want the landscaping in a  
24          different area. They might want different landscaping  
25          than we do. We are in agreement, we understand that

1 with new property we have to come into compliance with  
2 that. We're just trying to get to the point of  
3 getting to that.

4 I think with the paper locally, you guys saw  
5 that, actually one of the owners of our company was  
6 quoted in the paper. That we're looking for a new  
7 property some months back. We've been investigating  
8 that since.

9 MS. MASON: I think the ordinance states that  
10 you have to put the landscaping in the areas where  
11 it's shown here on the -- am I correct in that? That  
12 no matter what's there, what business is there, you  
13 still have to put landscaping where it is.

14 MR. DAVIS: This will, again, cause additional  
15 hardship on our business because, if I understand what  
16 I've been shown now on the original, there will be  
17 areas that we're currently using for display that,  
18 again, will have to be taken out, if the landscaping  
19 requires the display can't be put with that  
20 landscaping?

21 CHAIRMAN: In other words, you're over-built  
22 on a small location?

23 MR. DAVIS: We are very much so, yes, sir.

24 MR. MISCHEL: Revising their development plan  
25 for new parking standard they would meet the

1 ordinance. They would meet the parking and they would  
2 meet the landscaping. They have room to put all of  
3 that.

4 MR. DYSINGER: Can anybody tell me, either  
5 side actually, with the minimum parking required and  
6 then, is it 5 percent landscaping, Becky, that's  
7 required?

8 MS. STONE: Yes.

9 MR. DYSINGER: And the five percent  
10 landscaping. Can anybody tell me how much room that  
11 would leave for display? Either party,

12 MS. STONE: Perhaps their surveyor or engineer  
13 could. I couldn't do that off the top of my head.

14 MR. PEDLEY: I think it's on the plat 1951  
15 square feet interior landscaping.

16 MR. DYSINGER: But doesn't this plat reflect a  
17 higher parking requirement than what is in place  
18 today?

19 MR. MISCHEL: I believe when they're finished  
20 they're going to end up still with more parking  
21 required. So they could use some of that. They could  
22 dedicate that.

23 It seems like they're even going to have a  
24 little bit more parking than we require under the new  
25 standards.

1 MS. STONE: They estimated their required  
2 parking at 150 spaces or calculated, I guess, based on  
3 their retail area less some storage areas that the  
4 Zoning Ordinance allows you to discount. The 166  
5 spaces that I had in my Staff Report was just on the  
6 gross square footage.

7 They're saying they need 150 and they're  
8 providing 199. So there's an excess of 49 spaces that  
9 could be used to accommodate some interior landscaping  
10 outside of their display area.

11 MR. PEDLEY: Becky, excuse me. I stand  
12 corrected on this site for variance application. It  
13 states existing interior landscaping 3,937 square  
14 feet.

15 MS. STONE: On the original development plan?

16 MR. PEDLEY: Yes.

17 MR. NOFFSINGER: Proposed plan in the  
18 application.

19 MS. STONE: In the application.

20 MR. DYSINGER: So how many square feet are  
21 left over for display?

22 Sir, if you can respond to that, that would be  
23 great.

24 MR. DAVIS: I'm sorry, I cannot. I don't know  
25 the exact square footage.

1           MR. DYSINGER: Do you know how much square  
2           footage you're using currently for display?

3           MR. DAVIS: I'm afraid we have not measured  
4           that by square footage.

5           MR. DYSINGER: I'll take a ball park.

6           MR. DAVIS: Can I make another comment,  
7           please?

8           In regards to the parking spaces that there  
9           obviously is a buffer there, if I could use that word.  
10          It was pointed out that we are in a slower selling  
11          season. You're correct, in the spring our outside  
12          display area will grow some. Those 40 some spaces is  
13          what we intend on using for. I do not believe that we  
14          have the room to do the landscaping and for us to have  
15          displays with meeting the parking requirements.

16          MR. DYSINGER: Keeping in mind that the  
17          required landscaping only amounts to five percent of  
18          the total area.

19          MR. DAVIS: I understand that.

20          MS. STONE: If they're going to use that 40  
21          spaces for outdoor display, that needs to be  
22          designated on their final development plan regardless  
23          of what happens here tonight. That display area needs  
24          to be fixed on the plan so that we can assure that  
25          there's always required parking.



1           MR. DYSINGER: Not to get too far away from my  
2 point.

3           If they designate it as display area for busy  
4 season, like Mr. Davis is talking about now and that  
5 stuff is gone, can they use it for parking or would  
6 that cause an issue later? You can't call it parking  
7 and then use it for display.

8           MS. STONE: Right.

9           MR. DYSINGER: Can they call it display and  
10 use it for parking?

11          MS. STONE: Yes.

12          MR. DYSINGER: Just out of curiosity actually.

13          CHAIRMAN: A question. When you put the  
14 greenhouse and the fertilizer and all your plants out  
15 there and then when you bring another load of tractors  
16 and park those in the parking lot, how much is left  
17 then? I go by that place every day.

18          MR. DAVIS: Our understanding is that we will  
19 have to have 150 parking spaces after that. It's  
20 going to require us to operate different over this  
21 next time frame until we can find a building or land  
22 because we can't have the same amount of merchandise  
23 we did last year spring and be able to comply with  
24 that.

25          CHAIRMAN: You won't be able to park all your

1 tractors out in the parking lot and get by there.

2 MR. DAVIS: We won't be able to have as many  
3 tractors, you're correct, and other merchandise.

4 CHAIRMAN: In the spring of the year, they're  
5 all over.

6 Any other questions from the board?

7 MR. ELLIOTT: State your name.

8 MR. WEAVER: Dave Weaver, Bryant Engineering.

9 (MR. DAVE WEAVER SWORN BY ATTORNEY.)

10 MR. WEAVER: I'm David Weaver. I'm with  
11 Bryant Engineering.

12 We've submitted a final development plan  
13 that's currently being held.

14 Currently the subject property is about 4.7  
15 acres. The designated outdoor display area that we  
16 currently have is somewhere between one and a half and  
17 two acres. We have 44 parking spaces beyond what's  
18 required by the Zoning Ordinance. Then we have 150  
19 required and 199 available. Theoretically we could  
20 use the space allotted to that 49 parking spaces for  
21 additional outdoor display which would be roughly  
22 another acre of outdoor display we could add to the  
23 subject property.

24 Of course, that's ball park numbers without  
25 physically calculating that.

1           MR. DYSINGER: You said you had two acres  
2 total outdoor or outdoor display?

3           MR. WEAVER: That's an estimation you  
4 understanding. Basically just an estimate on what  
5 we've got currently submitted with planning. It looks  
6 to be about an acre and a half to two acres of outdoor  
7 display that we're currently using.

8           MR. DYSINGER: And then maybe another acre  
9 when you use the other 49.

10          MR. WEAVER: Yes, approximately.

11          MR. NOFFSINGER: I have a question for Mr.  
12 Weaver.

13                 Mr. Weaver, when you're talking about the  
14 amount of display area, does that include all of the  
15 equipment and tractors and whatnot that's lined up  
16 along the entrance now or are you speaking of what's  
17 shown on this plan or what's actually out there on the  
18 lot now?

19           MR. WEAVER: Gary, I can't see what plan  
20 you're looking at? Are you looking at a plan that we  
21 submitted?

22           MR. NOFFSINGER: Yes, sir. Yes.

23           MR. WEAVER: The plan that we submitted we  
24 surveyed in the actual limits of where items are for  
25 sale of outdoor display. So that would include, to my

1 knowledge I believe that includes all of the tractors  
2 and mulch.

3 MR. NOFFSINGER: Well, there are tractors  
4 lined up along the front drive aisle in front of the  
5 store where you show painted islands.

6 MR. WEAVER: Is that the area that would be in  
7 the northern corner, Gary, where we've got the outdoor  
8 display area?

9 MR. NOFFSINGER: Yes, sir. Number 28 maybe,  
10 56, where you have the number of parking spaces shown.  
11 Perhaps in those areas. Are you looking at the site  
12 plan that you prepared?

13 MR. WEAVER: Yes.

14 MR. NOFFSINGER: Right in front of Family  
15 Dollar and then right in front of the store you have  
16 painted islands. I think you have tractors there.

17 MR. WEAVER: You're correct. I don't believe  
18 we are showing that as outdoor display in that general  
19 area.

20 I think Rural King does have some outdoor  
21 display on the walk and they may have some up closer  
22 to the building that we didn't block off in our  
23 overall display area.

24 MR. NOFFSINGER: I guess these areas that  
25 you're showing as painted islands that would not be

1 parking areas. Are those going to be display areas  
2 or -- that's typically where you'd find the interior  
3 landscaping. If it's just a painted area and you're  
4 not going to display or it becomes a painted area  
5 where you're not using it for anything.

6 MR. WEAVER: That would be a question for Mr.  
7 Davis or the manager of Rural King because I'm not  
8 sure that painted area would be big enough to really  
9 display much.

10 MR. NOFFSINGER: Right. I know that right now  
11 there are tractors in some of those areas and other  
12 items. That's typically where your interior  
13 landscaping would go, and that's not shown on this  
14 plan as a display area.

15 MR. WEAVER: It could be that we didn't fully  
16 define that as the display area if they have a tractor  
17 or two in that general vicinity. I'm not really for  
18 sure.

19 MR. NOFFSINGER: Thank you.

20 MR. WEAVER: Any other questions?

21 (NO RESPONSE)

22 MR. PEDLEY: I would like to get Mr. Mischel  
23 back up one more time.

24 Has there been a revised final development  
25 plan submitted for approval?

1           MR. MISCHEL: There was one submitted to our  
2 office and we had some comments on it. It's just kind  
3 of in limbo right now.

4           We have made some statements on that, that  
5 they needed to tie down display areas, show exactly  
6 where they're going. At this time that hasn't been  
7 turned back in to us. I guess they're waiting.

8           MR. PEDLEY: So the site plan for the variance  
9 application is not correct?

10          MR. NOFFSINGER: Have they officially  
11 submitted an application for a final development plan  
12 or are we just looking at a review copy?

13          MR. MISCHEL: This is a review copy. I talked  
14 to Brian today and he sent comments back.

15          MR. NOFFSINGER: Did we receive an application  
16 for a final development plan and filing fee?

17          MR. WEAVER: That is correct. We have  
18 submitted a final development plan that when we  
19 submitted it at that time I believe I got a call from  
20 Jim. Of course, this is early November. At that time  
21 I believe what we were told by, I don't know if Jim  
22 called or Brian called, but someone called and said  
23 that that needed to be held. We needed to submit a  
24 variance to address the outdoor display areas and the  
25 landscaping issues.

1           MR. MISCHEL: Brian is holding that and in our  
2 discussions we talked about display areas have to be  
3 more defined and that's where we're at.

4           MR. WEAVER: Today we have not received a mark  
5 up. Obviously we would work with the Planning Staff  
6 to fully define the outdoor display areas when this  
7 landscaping issue gets beyond.

8           MR. PEDLEY: What I'm reading on this site  
9 plan that I think we need in the record. "In the  
10 event that the landscaping variance is not obtained by  
11 the Board of Adjustment, the owner shall be required  
12 to establish 1,951 square feet of interior  
13 landscaping, plant 23 interior trees, establish 550  
14 linear feet of perimeter landscaping, plant 5  
15 perimeter trees."

16           Are those numbers correct or are they to be  
17 adjusted?

18           MR. MISCHEL: We haven't reviewed. I would  
19 say it has to be as what's -- we have not reviewed  
20 that yet. Brian has that in his office. I would  
21 think tonight -- I can't tell you if those figures are  
22 right or not. It would have to be in compliance with  
23 the landscaping ordinance.

24           MR. PEDLEY: We need to ask for the new site  
25 plan to be filed for required landscaping and

1 buffering and outdoor display areas.

2 MS. MASON: This site plan is for the  
3 variance.

4 MR. PEDLEY: We're here on a variance. We  
5 don't want to give a variance based on this site plan  
6 that's not correct is what I'm saying.

7 MR. MISCHEL: Not using those figures.

8 MR. PEDLEY: So we're asking for a new outdoor  
9 display and site plan.

10 MR. MISCHEL: I would say it just has to  
11 comply with the landscape ordinance or as per the  
12 development plan. They're going to amend their  
13 development plan.

14 MR. DYSINGER: But these numbers here that --

15 MR. MISCHEL: Those are their numbers.

16 MR. DYSINGER: Based on this plan, the one in  
17 the application?

18 MR. MISCHEL: The engineer came up with.

19 MR. DYSINGER: So the one in the application  
20 is what we're looking at moving forward, as opposed to  
21 this one that's from 1992?

22 MS. STONE: Yes.

23 MR. NOFFSINGER: If I might add. The one from  
24 1992 also shows a half acre parcel that was to be  
25 developed at a later date subject to final development



1 plan approval, which there hasn't been any plan  
2 submitted for that. However, it has been improved  
3 without outdoor display, vehicular use areas, parking  
4 areas. That's also, that lot is also a part of this  
5 variance request because the site plan in the  
6 application shows what they intend to do with that  
7 property. However, in '92 they weren't going to use  
8 it.

9 MR. DYSINGER: Okay.

10 MS. STONE: The final development plan that  
11 was submitted also includes that tract. If the  
12 variance is denied, then their final development plan  
13 will be submitted showing landscaping as required  
14 under the current ordinance and their outdoor display  
15 areas will be shown and will be based on the vehicular  
16 use area that's remaining, the perimeter landscaping.  
17 If the variance is approved, you've waived all of that  
18 landscaping. So their final development plan would  
19 not show any landscaping or interior landscaping.  
20 That's why one of the conditions is the final  
21 development plan, you know, must be addressed  
22 regardless of the decision.

23 MR. WEAVER: Can I interject. Would the final  
24 development plan be a good mechanism to address a  
25 timetable related to the landscaping? That we could

1 put a note on the final development plan stating when  
2 the landscaping needed to be in place and that would  
3 give Rural King time to be able to dispose of the  
4 properties and move on?

5 MR. MISCHEL: I don't believe we have a time  
6 mechanism in our ordinance.

7 MR. WEAVER: Typically what you would do is  
8 the developer would post a landscaping bond and then  
9 put it in whenever it became time for them, whatever  
10 they chose. I'm not sure what the time frame is on a  
11 bond form.

12 MR. NOFFSINGER: David, I think the Staff's  
13 position on this would be that how much time are we  
14 going to give? We've been dealing with this since  
15 March. We've got an issue that we're responding to a  
16 complaint. There was an accident in the parking lot.  
17 We're responding to a complaint. We have a violation  
18 out there. We're trying to correct that violation.  
19 There's several things that need to happen. One is an  
20 amended development plan. The other is landscaping  
21 needs to be installed.

22 Yes, at some point it's going to have to be  
23 installed and when is that date. We've been working  
24 since March and now under official violation since  
25 August. I don't know that any of us know what that

1 date is going to be, but until we get a handle on the  
2 landscaping and get that installed and get some  
3 organization out there on that site, we're going to  
4 continue to experience what we've experienced in the  
5 past. That is the growth of these display areas in  
6 that parking lot. I don't think that anyone that's  
7 been out there I think could see that there are  
8 visibility issues in that parking lot and navigating  
9 that parking lot. We're trying to address this not  
10 only from an aesthetic point of view, but also a  
11 public safety point of view.

12 MR. MISCHEL: I started back in March on this.  
13 I don't know many telephone calls, how many  
14 discussions. I honestly believe that if it wasn't for  
15 this Notice of Violation we wouldn't be here tonight.  
16 I still would be making phone calls. Still having  
17 discussions. It's been doing that since March and I  
18 don't think it's --

19 MR. KAMUF: Jim, the issue on the interior and  
20 perimeter outdoor screening did not become an issue  
21 until after I was involved in the case. I guess we  
22 talked. You and I have talked and met for a month or  
23 so. The key issue at that time, wait until the  
24 parking ordinance is changed. The ordinance was  
25 changed in November, was it not?

1 MR. MISCHEL: Well, it's always been an issue.

2 MR. KAMUF: The parking was the only issue  
3 that we had. After we got the parking issue resolved,  
4 then that's when the issue came in about the perimeter  
5 of the interior landscaping.

6 MR. MISCHEL: We talked about it in March and  
7 April in discussions and officially was written out in  
8 August. It's on your violation of landscaping.

9 MR. KAMUF: We've had it since August, as far  
10 as the violation.

11 MR. MISCHEL: You've had it since before then.  
12 We've been working in good faith.

13 MR. KAMUF: I understand that. Once I started  
14 working with you, in other words, that didn't become  
15 an issue until August, as far as the landscaping.

16 MR. NOFFSINGER: No, sir. What Mr. Mischel is  
17 saying, he's been working on that issue since March.  
18 It was put down in writing in the form of a violation  
19 in August. It's been an issue since March.

20 MR. KAMUF: It wasn't an issue the first part  
21 when I got involved. The only issue at that time that  
22 we talked about was the parking. He said, get the  
23 parking straightened out. We waited. There wasn't  
24 any sense in doing anything until the ordinance was  
25 changed. When was that changed?

1           MR. MISCHEL: I think mainly that was your  
2 all's main interest was the parking. We had a lot of  
3 interest, but I think all you all wanted to talk about  
4 was the parking at the beginning. I had landscaping  
5 in and parking and the outdoor storage. I kind of had  
6 all of them.

7           MR. KAMUF: When was the ordinance changed on  
8 parking?

9           MS. STONE: It went to the Planning Commission  
10 in October. So it was probably December or late  
11 November.

12          MR. KAMUF: November or December.

13          MR. NOFFSINGER: October, November. It wasn't  
14 December.

15          MR. KAMUF: It wasn't approved by the  
16 legislative body until after that time. You all  
17 approved it --

18          MR. NOFFSINGER: It was approved by the  
19 legislative bodies by November.

20          MR. KAMUF: Yes.

21          MR. NOFFSINGER: Regardless of that issue, Mr.  
22 Kamuf, you still had a violation and you still had the  
23 responsibility to correct that violation. It was in  
24 your best interest to hold off for the parking  
25 requirements to be reduced. I don't think Mr. Mischel

1 was requesting that you hold off on that, but you saw  
2 that as certainly to your advantage.

3 You know, here we are today. We've accepted  
4 that. How much longer are we going to put it off?

5 MS. STONE: Waiting for the parking reduction  
6 did not prevent you from putting in perimeter  
7 landscaping. That would have been in the same  
8 location regardless of what your parking count would  
9 have been.

10 MR. DYSINGER: Jim, would you tell me one more  
11 time. What started all of this in March? We've  
12 talked a lot about parking. What instigated this  
13 whole thing in March? Was it the phone call about the  
14 --

15 MR. MISCHEL: Accident.

16 MR. DYSINGER: That's what started this whole  
17 thing was a safety issue.

18 MR. MISCHEL: We went out there to check it.  
19 We had another call too about the storage items and  
20 everything. Going out there and looking up the  
21 address, as we do normally when we check out a site,  
22 there was a development plan.

23 CHAIRMAN: Any other boards members have any  
24 comments or questions at this time?

25 (NO RESPONSE)

1           CHAIRMAN: Mr. Kamuf, do you have anything new  
2 to add?

3           MR. KAMUF: No, Mr. Chairman.

4           CHAIRMAN: Does Staff have anything else new  
5 to add?

6           (NO RESPONSE)

7           MR. PEDLEY: Is Chair ready for a motion?

8           CHAIRMAN: I so am.

9           MR. PEDLEY: I want to make a motion to deny  
10 the variance based on the Findings 1) it may adversely  
11 affect the public health, safety and welfare. Based  
12 on the purpose of landscaping is to promote the  
13 aesthetic appeal of the neighborhood and to promote  
14 public health, safety through reduction of noise,  
15 pollution and likewise. Landscaping promotes  
16 environmental conditions.

17           Two, it may cause a hazard or nuisance to the  
18 public by allowing vehicles to travel through unpaved  
19 and non-vehicle use areas onto streets. I have seen  
20 that happen up there.

21           Three, it will allow an unreasonable  
22 circumvention of the requirements of the zoning  
23 regulation because the strict application will not  
24 cause an undue hardship on the applicant and may set a  
25 precedent for others to follow to eliminate

1 landscaping.

2 With that the applicant will file a  
3 development plan showing landscaping and outdoor  
4 display according to the ordinances.

5 CHAIRMAN: Is there a second to the motion?

6 MR. DYSINGER: Second.

7 CHAIRMAN: A motion has been made and a  
8 second. Any other comments or questions from the  
9 board members?

10 (NO RESPONSE)

11 CHAIRMAN: Staff have anything else?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Hearing none all in favor raise  
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, please.

18 -----

19 ADMINISTRATIVE APPEAL

20 ITEM 6

21 501, 601 Commerce Drive, zoned B-1  
22 Consider a request for an Administrative Appeal to  
23 appeal the Zoning Administrator's interpretation that  
24 the tractor trailer, pallets stacked with unwrapped  
25 products, bundled cardboard and empty pallets  
constitute outdoor storage and must be screened with a  
6' high continuous wall or fence.  
Reference: Zoning Ordinance, Article 8,  
Section 8.5.14(k), Article 17, Table 17.311(5a)  
Applicant: Kermit Speer, Bruce Speer, Gary Melvin



1

2 MR. NOFFSINGER: Mr. Chairman, Mr. Mischel is  
3 here to present his findings regarding this case.

4 MR. MISCHEL: Jim Mischel.

5 I would like to pass around some photos and  
6 maybe you all just pass down the line and everybody  
7 take a look at. I'll give everybody a minute.

8 MR. KAMUF: May I ask a question, Mr.  
9 Chairman?

10 CHAIRMAN: Yes, sir.

11 MR. KAMUF: Are these photographs that you're  
12 passing, are they from the four violations that we  
13 have?

14 MR. MISCHEL: There's a series of photos and I  
15 think I gave you a copy of all of them.

16 MR. KAMUF: The four?

17 MR. MISCHEL: There was probably 20 of them  
18 all together.

19 MR. KAMUF: Those are not in issue. There's  
20 only four in issue.

21 MR. MISCHEL: I'm just giving them some  
22 background.

23 MR. KAMUF: Okay.

24 CHAIRMAN: Jim, while we're looking at them go  
25 ahead.

1           MR. MISCHEL:  These photographs that you are  
2           looking at right now, if you go by strict  
3           interpretation of the code and if you go under 8.5  
4           site development requirements, it does state that all  
5           outdoor areas under Section K, that these items could  
6           be displayed.  It says for the access open to the  
7           public display of operation vehicles or other finished  
8           products for retail.

9           So we're saying go by strict interpretation,  
10          these items could be displayed.  We don't have a  
11          problem with that.  The only problem we would have  
12          would be on the -- there are four pictures I think  
13          here.  I think that's what we're addressing here.

14          MR. NOFFSINGER:  Point of clarification for  
15          the record, Mr. Mischel.  You stated that you do not  
16          have a problem with these.  You don't have a problem  
17          with these items being categorized as display.  
18          However, you do take issue in some cases with the  
19          placement or where these items are placed on the  
20          property.

21          MR. MISCHEL:  Yes.  I mean it's going to have  
22          to be a dedicated space for display.

23          MR. NOFFSINGER:  And not inside the public  
24          right-of-way.

25          MR. MISCHEL:  Not on public right-of-way.

1 MR. NOFFSINGER: Or landscaping.

2 MR. MISCHEL: Or landscape areas.

3 MS. MASON: Some of the pictures that we have  
4 seen along here are not displayed in the correct --

5 MR. MISCHEL: We're talking about the items.

6 MR. NOFFSINGER: What he's showing there --

7 MS. MASON: The items can be displayed. They  
8 just may not be in the right area.

9 MR. NOFFSINGER: Right. These are not, the  
10 items he has shown you in these colored photos are not  
11 at issue under this appeal. Is that a correct  
12 statement?

13 MR. MISCHEL: Yes. These four here, I'm going  
14 to put one in the record. These four items here we  
15 have talked with them and we do take issue with these  
16 four. I've numbered them. If you take a look at  
17 them.

18 This first one is a storage trailer. The  
19 storage trailer on picture Number 1, items are stored  
20 inside that. So we don't think that's a display  
21 itself. That should not be there is what we're  
22 saying.

23 Picture Number 2 show pallets on the side and  
24 around back. There's some cardboard that has been  
25 bound together. There's some empty barrels there.

1 Also stacks of pallets. Looks like plastic wrapped  
2 around some black. We believe this it bulk items.  
3 You can't even tell what it is. In our opinion, it's  
4 not displayed because if you walked up to it you don't  
5 know what you're looking at. It's just bundled up.

6 Picture Number 3 is a better picture of all  
7 that material in black plastic. We believe the  
8 pallets are not displayed. We believe these items  
9 ought to be behind a fence.

10 Number 4, again, we don't believe that's  
11 display. That's more of storage item and should be  
12 within a fenced area.

13 A lot of these other items, like I said I'm  
14 not saying where they're at is okay. It's just the  
15 items are displayed.

16 It shouldn't be on public right-of-way. It  
17 shouldn't in a landscaped area. It should be within a  
18 development plan it will have defined space where  
19 display is.

20 MR. DYSINGER: But that's not an issue right  
21 now as much as it's -- you guys are working on that  
22 now, correct?

23 MR. MISCHEL: It's a matter of this  
24 Administrative Appeal is what we're talking about  
25 here.

1 MR. DYSINGER: Those four pictures.

2 MR. MISCHEL: Now, I'm not saying just those  
3 four. In the future it might be something else.  
4 These are typical of what we're looking at.

5 MS. MASON: If this trailer was closed up,  
6 that still is not allowed?

7 MR. MISCHEL: That's right because it's  
8 storage. It's not a displayed item.

9 MS. MASON: The fact that it's open they're  
10 trying to show it as a display.

11 MR. MISCHEL: I think they just store stuff  
12 inside it and bring it out.

13 MS. MASON: Okay.

14 MR. MISCHEL: I believe these four pictures  
15 here is what we're talking about here.

16 MR. NOFFSINGER: You're saying that these  
17 items should be stored inside a 6 foot high, maybe  
18 taller, privacy fence or chain-link with some type of  
19 screening material?

20 MR. MISCHEL: We thought, you know, most of  
21 this, except for this trailer, is occurring around the  
22 side and the back. We thought maybe installing,  
23 screening a fence around the back side will keep those  
24 items back there and dedicate the front of it to the  
25 display area and show it on the development plan.

1                   CHAIRMAN: Any questions of the Staff at this  
2 time?

3                   MR. NOFFSINGER: No.

4                   CHAIRMAN: Any board members have any  
5 questions?

6                   (NO RESPONSE)

7                   CHAIRMAN: Mr. Kamuf.

8                   MR. KAMUF: Let's talk about the trailer  
9 first.

10                  The trailer located on this front that we see  
11 here is part of an outdoor display area open to the  
12 general public. The applicant utilizes the trailer  
13 and its covering for straw. Inside that trailer is  
14 straw, I was out there today, which is being marketed  
15 for sale inside the trailer.

16                  As illustrated in the picture, steps have been  
17 taken to construct. You see a step going up to the  
18 area. The reason for that is so that they can take  
19 the straw out and show it to the public.

20                  Number 2, the pallets with wrapped material.  
21 That's the one we have on the right. The applicant  
22 has pallets on the subject property with marketable  
23 finished products wrapped in plastic. That's what we  
24 see here.

25                  Typically the applicant unwraps one pallet of

1 each bulk at a time. However, it's not uncommon for  
2 the applicant to sell a complete pallet, as we see  
3 here. The applicant contends that these wrapped items  
4 are for sales as they could be purchased as individual  
5 bags or by the pallet.

6 Number 3, the other two. This is the one on  
7 the bundle of cardboard that we see here and the other  
8 one on the left. The applicant contends that it's not  
9 uncommon for any retail store to have bundled  
10 cardboard and empty pallets awaiting removal from the  
11 site at any given time. These items are not being  
12 stored but simply awaiting removal from the site.

13 We have taken 18 different pictures in  
14 Owensboro of other areas. We took these all within a  
15 period of one hour. The reason that makes an  
16 important point is because two hours later it will  
17 look different. Let me introduce these.

18 The first exhibit is Exhibit Number 2. It's  
19 bundled cardboard behind Save-A-Lot. That's the same  
20 reason that this is bundled is because within the next  
21 24 hours it will taken away or there will be more  
22 cardboard.

23 I'll just pass these around.

24 Empty pallets at K-Mart on Parrish Avenue.  
25 The same situation that we have here. These are empty

1 pallets. What are the pallets going to be used for?  
2 They bring in goods. They take the pallets off.  
3 That's exactly what we have in this exhibit that we  
4 see here.

5 The next exhibit that we have pallets  
6 containing mulch, landscaping material at the K-Mart.  
7 If you see this one on K-Mart, it has a fence around  
8 it, but it doesn't have a 6 foot fence as they're  
9 going to require us to do.

10 Exhibit Number 5, bundled cardboard at Hobby  
11 Lobby. Same situation as we see the cardboard here.  
12 These pictures were taken within an hour. We could  
13 have taken a thousand of them.

14 These violations are standard in Owensboro, if  
15 there is a violation. We're saying it's not. These  
16 are temporary items that are there until they can be  
17 removed that afternoon or in the morning by a truck.

18 This one here, the bundle that you see in  
19 front of Hobby Lobby.

20 Here is another one that you see at Home  
21 Depot. Pallets containing mulch, landscaping  
22 material. That's what this one here is. It is for  
23 sale. Empty pallets at Home Depot.

24 Number 8, pallets containing mulch,  
25 landscaping material at Home Depot.



1           Pallets containing mulch, landscaping material  
2           at Home Depot.

3           Here's another one. This is bundled cardboard  
4           at the Target. All of these were taken in the last  
5           three weeks.

6           Now we're going to get to some stuff. You've  
7           been waiting for Wal-Mart. I could have another 25,  
8           but here's Wal-Mart, Exhibit Number 11. Bundled  
9           cardboard, Wal-Mart on Frederica Street. That is  
10          being what? It's sitting there because they're  
11          getting ready to take it off the next morning. Empty  
12          pallets, Wal-Mart on Frederica Street. Bundled  
13          cardboard, Wal-Mart. Here is pallets. Look at this  
14          one here. We have a few pallets. Wal-Mart must have  
15          several dozen.

16          Exhibit Number 15, bundled tires. Just as we  
17          have a bundle here. You see tires that are bundled  
18          where they're taken out one at a time out of a bundle.

19          Here's another one at Wal-Mart. Empty  
20          pallets.

21          Wal-Mart kind of outdid Lowe's, but here is  
22          some on Lowe's. Pallets containing mulch, landscaping  
23          material at Lowe's.

24          Empty pallets at Lowe's.

25          Bundled cardboard at Lowe's.

1           Right down the road here is Carpet Unlimited  
2 out in front, in front of their building with pallets.

3           Here's a nursery. I think this is on Burlew  
4 Boulevard. Pallets containing mulch, containing  
5 materials, Integrity Nursery.

6           This is on one of the busiest streets that we  
7 have in town. On the corner of Breckenridge and Old  
8 Hartford Road. Pallets containing landscaping  
9 material at the Marathon service station on  
10 Breckenridge.

11           Here is bundled cardboard at K-Mart. This is  
12 the K-Mart on Frederica.

13           Here's another one. You can see that they  
14 have it fenced in, but it's not where you can't see  
15 through it.

16           All we're asking is the same treatment that  
17 everybody else in town is getting as far as these.  
18 The only issue would be of any difference on any of  
19 these would be the truck.

20           Mr. Davis is here and he will explain about  
21 the trucks.

22           Do you have any questions about those? I  
23 think they're pretty well self-explanatory.

24           Is there any difference in pallets here? Any  
25 difference in materials containing mulch for resale or

1 cardboard than those? They were all taken within a  
2 period of one hour. We've got to be reasonable about  
3 this. If you've got temporary things that are going  
4 to be removed right away, certainly you don't have to  
5 put them in a screened storage area. Because most of  
6 those are not screened in a storage area.

7 MR. PEDLEY: Can you tell us what zone that  
8 Lowe's, Home Depot, Wal-Mart and all of those are in?  
9 We have a B-1 zone that we're talking about. What are  
10 the zones that you --

11 MR. KAMUF: You know that the service station  
12 out -- I can go over each one of them with you and  
13 that will be okay, if they want to.

14 MR. MISCHEL: I think there's a lot of  
15 violations out there. Every day you're going to have  
16 a violation. Not only in code, but police work and  
17 everything else.

18 Typically on the same token you're saying you  
19 want to be treated like everybody else. That's what a  
20 lot of people think about your landscaping. They put  
21 landscaping in and you didn't. Why aren't they  
22 treated the same way as we are?

23 Lowe's, Home Depot, Wal-Mart, if you go by, a  
24 lot of those places do have solid fencing.

25 MR. KAMUF: They didn't in those photographs.

1           MR. MISCHEL:  If you go out there, you'll see  
2           some screening where they keep a lot of product.  
3           Again, that's enforcement thing.  They let it spill  
4           out, but they do have solid fencing.  You go to Lowe's  
5           they keep their products --

6           MR. KAMUF:  Jim, why would you be so definite  
7           in trying to get those people to take cardboard and  
8           pallets out and require that to be in a storage area  
9           with screening around it?  Why is that such an issue  
10          where they're going to be removed the next day?

11          MR. MISCHEL:  I don't know that they're going  
12          to be removed the next day.

13          MR. KAMUF:  All over town, they're not stored  
14          up.

15          MR. MISCHEL:  That doesn't mean everybody is  
16          going to remove it the next day.  Some people do and  
17          some people don't.  In this case, it's impossible to  
18          throw a blanket over the whole town and say, everybody  
19          come in compliance?  We had complaints at this site  
20          here.

21          MR. KAMUF:  That's not the issue on this.  You  
22          didn't have a complaint about this.

23          MR. MISCHEL:  When we go to see about the  
24          complaint, we go out there and look at the site and  
25          here is what we find.  We find landscaping and storage

1 and things like that.

2 We did after talking with you and everything,  
3 we said that some of those items should be displayed  
4 and that's why we're saying that they should be  
5 allowed.

6 It's not what I want or I'm determining to  
7 get. It's just what the ordinance is.

8 MR. KAMUF: Are you saying that those three  
9 are in violation and the rest of them in the county  
10 are not in violation? Are those pictures, are they  
11 wrong?

12 MR. MISCHEL: No. I said there's probably a  
13 lot of violations out there. I didn't say the rest of  
14 the county doesn't have none. I said there's a lot of  
15 violations in the county.

16 I guess it's like a speeding ticket. Why am I  
17 getting a speeding ticket if somebody else is  
18 speeding? You deal with the one that you're dealing  
19 with.

20 MR. KAMUF: Are you going to enforce all of  
21 those violations tomorrow?

22 MR. MISCHEL: Probably not tomorrow.

23 MR. NOFFSINGER: But they are made a matter of  
24 public record and Mr. Mischel will be pursuing that I  
25 can assure you.

1           Some of those case are -- you mentioned  
2           K-Mart, Save-A-Lot. Those are grandfathered uses.  
3           Have been there for years prior to the adoption of the  
4           Zoning Ordinance. There's not anything that Mr.  
5           Mischel can do.

6           MR. KAMUF: That new Wal-Mart is not.

7           MR. NOFFSINGER: I said some of those, Mr.  
8           Kamuf. I mentioned Save-A-Lot and K-Mart. Those are  
9           two. Those we can't do anything on, but the others  
10          Mr. Mischel will. They've been brought to his  
11          attention and he will have to do it.

12          One of the differences here at this particular  
13          location is it's highly visible from not just Commerce  
14          Drive from US 60 bypass. People coming in and out of  
15          town, visitors into town and people that live here can  
16          see that site quite frequently.

17          Now, some of those pictures there that you're  
18          pointing to had pallets with items stacked on it.  
19          Well, I guess they're displayed areas because you're  
20          receiving the benefit of the display areas out in  
21          front.

22          MR. KAMUF: Then that's a display area.

23          MR. NOFFSINGER: I think Mr. Mischel might  
24          have stated that perhaps that one is. We're looking  
25          at examples. This particular area is certainly not

1 shown as a display area on your development plan.

2 MR. KAMUF: Are you going to say that crates  
3 where they are removed every day and is a temporary  
4 item that's right there on the property is going to be  
5 removed the next day, that that is a violation of some  
6 Zoning Ordinance?

7 MR. NOFFSINGER: Yes, Mr. Kamuf, it may very  
8 well. If it's here today and gone tomorrow, that's  
9 one thing. But if it's here for several days and  
10 they're stacked up. You know, what is the schedule?  
11 I'd like to know the schedule on removal of this  
12 cardboard and pallets because from what I can tell  
13 that's a daily occurrence and it seems not to change  
14 much. I may be in error. Maybe this is an unusual  
15 day.

16 MR. MISCHEL: Do they remove these every  
17 single day?

18 MR. KAMUF: I can't answer that.

19 MR. NOFFSINGER: That's what was stated.  
20 They're removed on a daily basis. That's a lot of  
21 pallets.

22 MR. DAVIS: Those are removed as we have  
23 trucks come in. It depends on the season. We will  
24 have trucks every day sometime in the busy times of  
25 years. There are other times where it's every two

1 days. This is a higher volume store and so we have  
2 more trucks here and they're removed each time a truck  
3 comes. Does that answer your question?

4 MR. NOFFSINGER: Yes, sir.

5 MR. MISCHEL: I would encourage Mr. Kamuf and  
6 the representatives of Rural King to come to the  
7 office tomorrow. I'll be glad to show them about  
8 Lowe's, Home Depot, and Wal-Mart where they've been  
9 cited in the past for storage. It is a continual  
10 problem. I can cite them and they can come into  
11 compliance and they might be out of compliance in a  
12 month, six months or whatever, but I would welcome you  
13 all to come tomorrow and we'll sit down and just look.

14 MR. DAVIS: I'm unable to do that. I drove  
15 four hours to be here tonight.

16 MR. MISCHEL: We'll make copies and send them  
17 to you. I would welcome you to come down and take a  
18 look at that just to show you that we are trying to be  
19 consistent.

20 MR. DAVIS: Can I make some comments about  
21 some of these pictures, please?

22 In regards to the trailer there, the first  
23 picture here on the left-hand side of the board there,  
24 that is a straw trailer. That is all that's in that.  
25 That is sold on a regular basis. That inventory turns



1 on a regular basis. We're constantly replenishing  
2 that merchandise.

3 It is not storage where merchandise, all kinds  
4 of different merchandise is stored. I thought that  
5 was one of the comments that was made. In that  
6 trailer right there, that is just straw.

7 I want to address specifically, and you would  
8 only know this if you're in our business, or Wal-Mart,  
9 Home Depot, Lowe's. This merchandise right here, I  
10 will guarantee the city or the county does not want  
11 Rural King or any other group to unwrap multiple  
12 pallets of that merchandise because that merchandise  
13 will just fall off the pallets. That's the reason  
14 that we have one pallet at a time.

15 There was also a comment made. We sell  
16 several full skids or pallets of that merchandise.  
17 This mulch is terrible merchandise to handle and it  
18 will get much messier if we're required to unwrap  
19 every pallet that we have.

20 MR. DYSINGER: Mr. Chairman, can I ask a  
21 question?

22 The issue of the straw truck. Are customers  
23 allowed to enter the straw truck and look at the  
24 straw?

25 MR. DAVIS: They are allowed to. I can't say

1       that that's happens all the time. Customers want to  
2       go in and review the bales and see what kind of bales  
3       they want, then they might. I can't say every  
4       customer wants to do that. Yes, they're allowed to do  
5       that.

6               MR. DYSINGER: It is open for that.

7               MR. DAVIS: Yes, sir.

8               MR. MISCHEL: Let me say that I think our  
9       office if these pallets, the pallets I'm talking about  
10      in the back, were put out that day, I don't know if  
11      there's a pallet company that comes by --

12              MR. DAVIS: Sorry to interrupt. We bring them  
13      back to Mantune, Illinois and they're disposed of  
14      there. They're reused or disposed there. That's the  
15      same with the cardboard. All of our stores do the  
16      exact same thing. Not just the Owensboro location.

17              MR. MISCHEL: I would think if those pallets  
18      are put out that day and they're taken and that  
19      cardboard is bundled up, rolled up in the back and  
20      somebody is there to pick it up, that's one thing.  
21      For these items to be stored there for many days or  
22      weeks, that's a different item. I don't know if  
23      you're telling me that they're taken away every day,  
24      that might be a different story.

25              MR. DAVIS: I would again repeat. I did not

1 say every day. When we have trucks, which is  
2 sometimes every day, sometimes it's every two days,  
3 based on the volume of the store and the volume of the  
4 season. I would be very surprised if you could find  
5 instances where we have the same pallets, the same  
6 cardboard there for weeks, which is what you stated.

7 MR. MISCHEL: I think our solution to Mr.  
8 Kamuf was to put a fence so far in the back to screen  
9 it from the public view. For items that might be  
10 there. Pallet with white plastic around them, I don't  
11 know how long it has been sitting there. I'm sure you  
12 don't either. If it's been sitting there for a long  
13 time, maybe just until --

14 MR. DAVIS: But this is displayed merchandise.  
15 Not storage merchandise.

16 MR. MISCHEL: Well, that's where we differ. I  
17 say it's display if they took the plastic off, the  
18 white plastic, you could see what it was. Mulch --

19 MR. DAVIS: Again, you don't want us to do  
20 that. I'm just being honest with you.

21 MR. MISCHEL: I'm just saying --

22 MR. DAVIS: If you look, and I would hope you  
23 agree. If you look at the majority of our  
24 merchandise, it is uncovered there. I think there are  
25 very few instances where it's covered like that.

1 That's specifically because of the type of product and  
2 the fact that we're trying to keep it cleaner and  
3 neater than if we unwrap it.

4 MR. MISCHEL: I think the difference is if  
5 anybody got out of the car and walked around back and  
6 looked at that pallet, I wouldn't know what was in  
7 there, as far as display.

8 MR. DAVIS: I completely disagree. In regards  
9 to customers that buy that merchandise on a regular  
10 basis, they know exactly what that merchandise is.

11 MR. MISCHEL: Then they don't really need the  
12 display. They just come inside and say, I want this.

13 MR. DAVIS: We don't have that inside.

14 CHAIRMAN: Okay. We're arguing over nothing.  
15 The same thing over and over.

16 Jim, have you got anything new to add?

17 MR. MISCHEL: No.

18 CHAIRMAN: Have you got anything new to add?

19 MR. DAVIS: No, sir.

20 CHAIRMAN: Mr. Kamuf, you got anything new?

21 MR. KAMUF: That's it.

22 CHAIRMAN: Does the board have any questions  
23 or comments at this time?

24 MR. DYSINGER: I've got a couple.

25 First off legally. The pictures that we're

1 dealing with, is it possible to take them apart?  
2 Meaning can we state that, yes, this is in fact a  
3 display, but this is not, or do we have to take all  
4 four of these issues?

5 MR. ELLIOTT: You can take one at a time.

6 MR. DYSINGER: That's it for right now.

7 CHAIRMAN: Does Staff have anything else to  
8 add?

9 MR. NOFFSINGER: I do have one question of  
10 Mr. Davis.

11 On picture Number 2 or item Number 2, that's  
12 the pallets that are wrapped with the mulch. Are  
13 those pallets located on your property?

14 MR. DAVIS: I am not sure the answer to that  
15 question. This is behind our facility I believe so  
16 I'm not sure exactly where it's located in regards to  
17 the property line.

18 MR. NOFFSINGER: The reason I ask that  
19 question, it appears to me that those pallets are not  
20 even located on your property. Because looking at  
21 this site plan it may or may not be. If they're not  
22 located on your property, that's another issue because  
23 then it becomes off-site. Perhaps those pallets we're  
24 looking at -- I think we've already addressed in terms  
25 of outdoor display the merchandise that's contained on

1       that, in that manner. Since these are off-site, I'm  
2       not sure that we really should be considering that as  
3       a particular area or a particular use that you're  
4       considering.

5               MR. DAVIS: Is your issue where they are  
6       located? Because we've stated from the start we are  
7       truly -- you might not believe it. We're trying to be  
8       good neighbors. I would agree that if that's stored  
9       on someone else's property, we need to move it. I  
10      have no problem with that.

11             MR. NOFFSINGER: Sure. I'm not sure -- I  
12      guess it would be where they're located because if  
13      they're not located on this property, it's not even an  
14      issue here.

15             I guess what we're considering is that  
16      particular arrangement of pallets, merchandise. What  
17      is that? Is that display or is that storage?

18             MR. DAVIS: That is merchandise for sale. I  
19      don't want to cause a problem and continue to repeat.

20             MR. NOFFSINGER: Thank you.

21             MR. DYSINGER: Gary, is Staff stating that  
22      they don't believe that it's even an issue because it  
23      may not be on the property? Is that what you guys are  
24      saying at this point or not?

25             MR. NOFFSINGER: I think the real issue here

1 in looking at these pictures would become the trailer,  
2 the pallets, empty pallets, and the cardboard. If you  
3 look at this picture with the trailer,  
4 tractor-trailer, you've got some cardboard next to it,  
5 and then you've got some drums that I think is  
6 merchandise for resale and you've got some water tanks  
7 and whatnot. Those items I think they're saying those  
8 are display items, but many of those items are within  
9 their interior landscaping area and some likely on  
10 right of way. I think we need to clarify what we're  
11 considering as storage. I think it's 1) the trailer,  
12 2) the cardboard, and 3) the pallets.

13 Is that the issue?

14 MR. DYSINGER: You mean the pallets that are  
15 empty waiting to be, according to the appellate, taken  
16 away or the pallets with merchandise on them?

17 MR. NOFFSINGER: No. Not the pallets with  
18 merchandise on it.

19 MR. DYSINGER: Is it the Staff's opinion that  
20 the pallets that we see with merchandise on them are  
21 not on the appellate's property and therefore  
22 shouldn't be considered?

23 MR. NOFFSINGER: Well, that's my opinion.

24 MR. DYSINGER: Is that Staff's opinion?

25 MR. NOFFSINGER: Well, that's Staff's opinion.

1       However, we don't know that. We're not certain, but  
2       they appear to be out there in the corn field.

3               CHAIRMAN: In other words, we're not  
4       considering Number 4.

5               MR. NOFFSINGER: Here is what I'm getting at,  
6       and maybe clarify it.

7               If the applicant is saying that the pallets  
8       with the mulch are display items, then they need to be  
9       in an area that's defined on their development plan as  
10      display area.

11              MR. DYSINGER: Which we don't have anyway.

12              MR. NOFFSINGER: At this point we don't, but I  
13      think we will. I can understand that.

14              However if they were to say, well, the cart of  
15      empty pallets and the pallets with cardboard are going  
16      to be in a display area, therefore they're on display,  
17      then we wouldn't buy that. If they're saying that  
18      these items, the mulch are within a display area  
19      that's approved on their development plan, then I  
20      think that's satisfactory. Because that's what you're  
21      seeing in some of these other pictures and that's what  
22      you see on the front of their property.

23              MS. MASON: Could the trailer be in a display  
24      area that's on the site plan?

25              MR. NOFFSINGER: That's a good question.



1 That's a tractor-trailer that's used for storage.  
2 They are storing, in my mind, they are storing items  
3 within that area. I think it's questionable. I think  
4 that's a decision that the board is going to have to  
5 make in terms of, you know, what it is. At this point  
6 I'm going to support my staff and say that's storage.  
7 I think that's within the board's judgment in terms of  
8 the way they've described the use of this and the way  
9 it's set up as to whether or not you believe that's  
10 storage or that's display.

11 MR. KAMUF: Mr. Chairman, one thing. This  
12 might help.

13 When we met with the Staff about all those  
14 other pictures, they said we're in violation. We  
15 showed them this provision of the ordinance and they  
16 agreed to it. They just didn't agree to it as to  
17 those four pictures.

18 Here is this what the ordinance says. "It is  
19 the applicant's contention that the existing outdoor  
20 display meets these requirements." Here they are.  
21 "All outdoor areas or yards that are used for storage  
22 or manufactured products, materials to be used in  
23 manufacturing, wholesale commodities, automobile, junk  
24 yards, salvage and scrap iron yards not including  
25 areas for employ or customer parking nor areas that

1 are open to the public for the permitted display of  
2 operational vehicles or other finished products."

3 I don't think there's any question that those  
4 things are on pallets. We're not trying to say --  
5 talk about the location. We're just saying when you  
6 have those type of items for what? For finished  
7 products for retail. That it's a display item under  
8 this provision of the statute of the ordinance. I  
9 mean that's quite clear, I think. You understand?

10 MR. NOFFSINGER: No.

11 MR. KAMUF: Here's the ordinance.

12 MR. NOFFSINGER: Is that in your application  
13 or what are you reading from?

14 MR. PEDLEY: It's in the Zoning Ordinance.

15 MR. NOFFSINGER: I don't have the Zoning  
16 Ordinance.

17 MR. KAMUF: It's 8-9(k). It has a quote  
18 around it, if you notice. Then it says, "are open to  
19 public for permitted display of operational vehicles  
20 or finished product for retail."

21 This is a finished product for retail.

22 MR. NOFFSINGER: What's that now? What is  
23 this?

24 MR. KAMUF: I'm saying every one of them.

25 MR. NOFFSINGER: You're saying those empty

1 pallets are finished products for retail?

2 MR. KAMUF: We're talking about here.

3 MR. NOFFSINGER: No. We gave you that one.

4 MR. KAMUF: Okay. Then on the trailer. In  
5 other words, the trailer is there. Why is the trailer  
6 is? So people can walk up. It has an access point  
7 going to it, where you have steps going up to it. Is  
8 that not for retail sale?

9 MR. NOFFSINGER: Does that factor in to your  
10 square footage of your building?

11 MR. KAMUF: You'd have to talk with those guys  
12 about square footage. I don't know.

13 MR. NOFFSINGER: I've stated my position on  
14 that one, Charlie. I'm unclear on it. I'm going to  
15 support Staff's position on it. The board has to make  
16 a judgment call there. That's why you're appealing  
17 it.

18 MR. WEAVER: The trailer was not counted in  
19 the building square footage, but if the Staff would  
20 like us to and address the comments in the final  
21 development plan, we certainly could. We'd have  
22 sufficient parking to cover the retail square footage.

23 MR. DYSINGER: I would hope that as the guy  
24 putting together the new development plan, you've  
25 listened very closely to everything that was said here



1 know.

2 The items that you see here. On the pallets,  
3 this one here and this one down here, those are behind  
4 the building. The trucks pull in behind the building  
5 and they take those out daily or every couple of days  
6 or pretty quick after that. These pallets along with  
7 this cardboard, that doesn't stay in front. Bring in  
8 a truck, take away the pallets, take away the  
9 cardboard.

10 MS. MASON: But isn't that area at the bypass?  
11 People see it when they're going down the bypass.

12 MR. NOFFSINGER: Yes.

13 MR. KAMUF: I'm sure they can. If it's there  
14 temporarily. How do you work that out? Somebody  
15 takes a low end and they automatically have to take  
16 the bundle of paper or a bundle of --

17 MS. MASON: Well, a lot of businesses they do.  
18 They break up the cardboard and put it in the  
19 dumpster. Now, I understand this sort of business  
20 with pallets, you know. I just know from my  
21 experience, I guess I could say.

22 MR. KAMUF: We're talking about retail items.  
23 I think that would be just about an impossibility,  
24 other than --

25 MS. MASON: I'm talking about the pallets and

1 the cardboard is what I'm talking about.

2 MR. KAMUF: That's what I'm talking about.  
3 How do you remove those within 24 hours every day?  
4 Jim Mischel won't have anything to do but enforce  
5 those ordinances.

6 I'm asking. Is it two or three days? Is two  
7 days too long to have storage behind so another truck  
8 could come in and take it away?

9 MR. NOFFSINGER: Charlie, I think it's hit on  
10 the storage. That's what we're dealing with. The  
11 other piece of property that's zoned B-1, which is a  
12 neighborhood business center that requires a  
13 development plan and your development plan has been  
14 approved clearly shows that you're not going to have  
15 any outdoor storage in that area.

16 MR. KAMUF: Is it outdoor storage?

17 MR. NOFFSINGER: On each and every development  
18 plan that comes in, Planning Staff, we address outdoor  
19 storage areas among many other things.

20 MR. KAMUF: Sure.

21 MR. NOFFSINGER: That's what we have to  
22 address here. You're not showing any areas for  
23 outdoor storage. However, that's what this area is  
24 being used for. It's a storage area of items to be  
25 stored awaiting removal. You stated yourself it's

1 storage. I think that's what we're -- it's not a  
2 display, then it becomes storage. If it's not  
3 storage, what is it? This board can't alter, they  
4 can't do anything about these other sites. They can't  
5 alter what the zoning ordinance says. They have to  
6 make a determination as to whether or not Jim made the  
7 right appropriate decision. That is classifying these  
8 as outdoor storage areas. If they're not, then what  
9 are these areas?

10 MR. KAMUF: It's a pick-up point. They pick  
11 it up. They drive a truck in. They drop off  
12 something and they pick it up and take the item away.  
13 Is that storage? I don't think so.

14 MR. DYSINGER: Mr. Kamuf, when they come in  
15 and pick up these pallets and so forth, do other  
16 pallets come in with merchandise on them?

17 MR. DAVIS: I'm sorry, your question was?

18 MR. DYSINGER: When they come in with the  
19 truck to pick up the empty pallets, they come in with  
20 more pallets of merchandise on them.

21 MR. DAVIS: Yes, sir.

22 MR. DYSINGER: The merchandise is taken off  
23 and the pallets are put back in the same spot.

24 MR. DAVIS: Yes.

25 MR. DYSINGER: So even though they're picked

1 up -- I worked in retail for a lot of years. I'm not  
2 unsympathic to your problem here.

3 In essence there is always pallets stacked up  
4 there and always bundled cardboard. It may not be the  
5 exact same pallets and bundled cardboard as yesterday,  
6 but --

7 MR. DAVIS: I can't say that there are always.  
8 There will be the majority of the time some type of  
9 material.

10 MR. DYSINGER: In that area?

11 MR. DAVIS: Yes.

12 MR. DYSINGER: Thank you, sir.

13 CHAIRMAN: Does anyone got any new  
14 information?

15 MR. HOWARD: Greg Howard.

16 On the pallet issue, those pallets do flow.  
17 We're continually getting trucks. I mean if you drive  
18 by there you may think they sit there for days and  
19 days at a time, but they do not. They do get loaded  
20 back on the trucks and they're taken out on a regular  
21 basis and more may be stacked back there for another  
22 truck at a later time.

23 CHAIRMAN: Thank you.

24 Does the board have any other questions or  
25 comments?



1 (NO RESPONSE)

2 CHAIRMAN: Staff have any new information?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Mr. Kamuf, have you any new  
5 information?

6 MR. KAMUF: I wish I did, but no.

7 CHAIRMAN: Waiting for the board to make a  
8 decision.

9 MR. DYSINGER: What's the best way to do this  
10 in terms of taking them? I'll state right now that I  
11 do think that some of these issues are storage and  
12 some of them aren't display. I can't vote on this  
13 appeal all the items at one time. How is the best way  
14 to handle that?

15 CHAIRMAN: Mr. Attorney, answer his question,  
16 please.

17 MR. ELLIOTT: I think that you need to  
18 determine which one the Zoning Administrator is  
19 correct on. Item Number 1, Item 2, Item 3. And which  
20 one you disagree with, as far as --

21 MR. DYSINGER: Before we make a motion.

22 MR. ELLIOTT: Yes.

23 CHAIRMAN: Do we include that in his motion?

24 MR. ELLIOTT: Yes.

25 MR. DYSINGER: Included in the motion?

1 MR. ELLIOTT: Yes.

2 MR. SILVERT: And I think you need to be clear  
3 since the numbering on the appeal is different than  
4 the numbering on the other exhibits. That you  
5 identify which one you're using the numbers for.

6 MR. NOFFSINGER: I recommend you go with  
7 what's in the application.

8 CHAIRMAN: Excluding Number 2. That's back  
9 in the corn field.

10 MS. MASON: We still have to deal with it,  
11 don't we, since it's part of the application?

12 MR. MISCHEL: I don't think we deal with it  
13 because that item might show up on their property.  
14 You would either approve it as a display area or not.  
15 They could tomorrow move it back over. I would think  
16 you consider it.

17 MR. DYSINGER: It's either storage or it's  
18 display. That's what's at issue. Whether the item  
19 pictured is storage or display; is that correct?

20 MR. ELLIOTT: Right.

21 MR. DYSINGER: Mr. Chairman, I move to uphold  
22 the appellant on Item 1 of the trailer. I believe it  
23 is a display area. Giving the findings that it's open  
24 to the public and the merchandise is clearly for sale.

25 I further move that Items 2 and 3 and 4 are

1 outdoor storage. On Item 2, given the finding that  
2 there is no signage and no other indication of what  
3 the merchandise is or what it would sell for.

4 On Items 3 and 4, given the finding that the  
5 testimony we heard states that the areas used for  
6 storage of refuge until it could be hauled away.  
7 That's my definition of storage.

8 CHAIRMAN: Is there a second?

9 MR. PEDLEY: Second.

10 CHAIRMAN: A motion has made and a second.

11 Board members have any other comments or questions?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have any other comments?

14 MR. NOFFSINGER: No, sir.

15 MR. DYSINGER: I would like to say one thing.

16 On the issue of signage on merchandise that's on  
17 display, it doesn't matter if somebody comes in and  
18 knows what it is because it's the business that  
19 they're in. It seems to me it's more important what a  
20 reasonable person would understand. Looking at the  
21 merchandise display, it's difficult to tell what it  
22 is, what it's for sale for, that sort of thing. I  
23 just want to make that determination of the motion. I  
24 just wanted that in the record.

25 MR. PEDLEY: I'd like to clarify one thing.

1 The items in the application 1, 2, 3 and 4 are  
2 different than the numbers --

3 MR. DYSINGER: We stated that the application  
4 photos.

5 MR. TAYLOR: If I disagree with one point that  
6 he has, I'm going to disagree with his whole motion,  
7 correct?

8 MR. NOFFSINGER: Correct.

9 MR. TAYLOR: It's not going to be an  
10 individual basis. It's saying that he thinks one is  
11 display and two, three and four are storage. So if I  
12 just disagree with one of those, I disagree with the  
13 whole motion?

14 MR. DYSINGER: I believe that's correct.

15 MR. ELLIOTT: Yes.

16 CHAIRMAN: Our legal counsel has advised us.

17 All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT - MARTY WARREN,  
19 SEAN DYSINGER, RUTH ANN MASON, C.A. PANTLE, WARD  
20 PEDLEY AND JUDY DIXON - RESPONDED AYE.)

21 CHAIRMAN: All opposed.

22 (BOARD MEMBER CLAY TAYLOR RESPONDED NAY.)

23 CHAIRMAN: Motion carries.

24 MR. KAMUF: Mr. Chairman, may I ask one  
25 question?

1           Sean, your issue was if it had a sign out  
2           there for sale, it would have made a difference as far  
3           as your opinion?

4           MR. DYSINGER: I think based on the testimony  
5           that we heard, it's display. Again, I want to state  
6           that there's no display area that I know of that's  
7           been designated. We're just trying to deal with  
8           things based on this application. Is this a display  
9           of goods for sale or is it storage? Given that, I  
10          think in the future when there's display areas and  
11          non-display areas, I think that will all change, but  
12          given that, if a reasonable person or, for instance, a  
13          person driving by on the bypass looks down and there's  
14          signage and there's a price and so on and so forth,  
15          it's a reasonable assumption that that is a display  
16          for sale. If there is no signage, you can't tell what  
17          it is and, Mr. Davis, you stated that somebody who  
18          buys that product could come in and know exactly what  
19          it is. I have no doubt of that. However, if a  
20          reasonable person off the street can't tell what it  
21          is, it's probably storage and not a display. That's  
22          the reasoning behind the motion that I made. If that  
23          helps you guys going forward, all the better.

24          MR. NOFFSINGER: Mr. Dysinger, you're not  
25          saying in any way that if they would put a sign on

1 pallets or cardboard saying "cardboard or pallets for  
2 sale," that that would in any way change what your --

3 MR. DYSINGER: No. Again, in the record, as  
4 you guys are moving forward on your process and  
5 designating display area and storage area, it will  
6 make, I hope, most of this mute.

7 CHAIRMAN: I'll entertain one final motion.

8 MS. DIXON: Move to adjourn.

9 MS. MASON: Second.

10 CHAIRMAN: All in favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY )  
 )SS: REPORTER'S CERTIFICATE  
2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 102 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 25th day of January 2007.

18

19

\_\_\_\_\_  
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COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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